

34
9/3/02
JR

ORIGINAL

FILED
HARRISBURG, PA

AUG 30 2002

MARY E. D'ANDREA, CLERK
Per [Signature] Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Nancy Hall, individually and
as the Representative and
Administratrix of the Estate of
Tommy Hall, deceased, her husband,
Plaintiff

v.

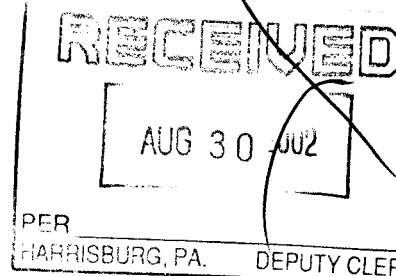
Cuna Mutual Group, Cuna Mutual
Insurance Society,

Defendants

CIVIL ACTION - LAW

1:01-CV-1265

(Judge Christopher C. Conner)



**APPENDIX TO DEFENDANT'S
BRIEF IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Michael R. Kelley
Charles T. Young, Jr.
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
Phone: (717) 237-5322
Fax: (717) 237-5300

Dated: August 30, 2002

MEMBERS HOME MORTGAGE PROTECTION II APPLICATION

GROUP MORTGAGE INSURANCE

PLEASE PRINT

32534
CERTIFICATE NO.

| | | | |
|---|--|---|--|
| (A) Name <u>Tommy Bob Hall Jr</u> Borrower # 1 | | Name <u>Nancy M. Hall</u> Borrower # 2 (Must be an individual who is jointly responsible for the loan) | |
| Address <u>517 Mt. Pleasant Rd</u> <u>Fayetteville, PA 17222</u> | | Address <u>517 Mt. Pleasant Rd</u> <u>Fayetteville, PA 17222</u> | |
| Home Phone: <u>(717) 352-9030</u> | | Home Phone: <u>(717) 352-9030</u> | |
| Social Security # <u>563-82-5959</u> | | Social Security # <u>203-44-1196</u> | |
| Date of Birth <u>5-12-55</u> Age <u>43</u> Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F | | Date of Birth <u>5-28-53</u> Age <u>45</u> Sex <input type="checkbox"/> M <input checked="" type="checkbox"/> F | |
| Height <u>5'6"</u> Weight <u>200</u> | | Height <u>5'3"</u> Weight <u>165</u> | |
| Occupation <u>TRUCK DRIVER</u> | | Occupation <u>HOUSEWIFE</u> | |

(B) Borrower # 1 Yes ☐ No ☒ Borrower # 2 Yes ☐ No ☒

1. Have you ever been treated for or diagnosed by a member of the medical profession as having any of the following (Please check the box and circle condition(s) that applies)

Diabetes; high blood pressure; chest pain; heart, blood, blood vessel, lung or breathing disorders; cancer; epilepsy; stroke; pneumonia(s); arthritis; brain, mental, nervous, back, neck, joint or muscular disorders; stomach, intestines, liver, pancreas, or kidney disorders; cirrhosis, drug or alcohol abuse, acquired immune deficiency syndrome or AIDS related complex, or tested positive for antibodies to the AIDS virus? (NOTE TO RESIDENTS OF ME, ND, VT AND WI: You do not have to disclose positive test results for the antibodies to the AIDS Virus)

☐ ☒ 2. During the past 3 years, have you for any reason been hospitalized?

☐ ☒ 3. Have you used tobacco in any form within the past 24 months?

☒ ☐ 4. Are you now gainfully employed on a full-time basis and presently working 25 hours a week or more? PA.

Name and Address of Family Physician Dr. E. E. Smith, 144 S. 3rd St., Chambersburg, PA 17201

GIVE FULL DETAILS BELOW FOR ANY HEALTH PROBLEM INDICATED IN THIS SECTION.

| Name of Person | Name & Address of Physician | Nature of Condition | Dates & Duration |
|----------------|-----------------------------|---------------------|------------------|
| | | | |

(C) LIFE COVERAGE: ☒ Single ☐ Joint

1. Amount of Insurance Requested \$56,000.00
(Your loan balance, up to \$250,000)

2. Life Insurance Charge 11.11
(Refer to rate table)

DISABILITY COVERAGE: ☐ Single ☐ Joint ☒ No Coverage

1. Amount of Insurance Benefit Requested 0.00
(Your monthly payment, up to \$1,000 for single and \$1,500 for joint coverage)

2. Disability Insurance Charge 0.00
(Refer to rate table)

NOTE: You must apply and be approved for LIFE to be eligible for DISABILITY coverage. If you select **Joint Disability**, coverage and benefits will be split equally between Borrower #1 and #2. If the insurance you applied for is approved, it will become effective on the date of approval or, if later, the effective date of the loan as shown on this Application.

(D) CONSUMER PROTECTIVE AUTHORIZATION

Consumer Authorization Form

These answers are true and complete to the best of my knowledge and belief. To determine my insurability, or for claims purposes, I authorize any medical practitioner or institution, insurance company or the Medical Information Bureau, Inc., Consumer Reporting Agency, or employer to give any information about my physical or mental health condition, treatment, or any non-medical information to CUNA Mutual Insurance Society, or its reinsurer. I agree that this authorization shall be valid for 30 months from the application date. I have read the Consumer Privacy Notice pertaining to the Medical Information Bureau as required by the Fair Credit Reporting Act. The Society shall incur no liability until this application is approved by the Society and the first premium paid.

By signing this application, I acknowledge that I understand that this policy contains a war exclusion. Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

I authorize my financial institution to pay my insurance premiums as indicated above to CUNA Mutual Insurance Society by Electronic Funds Transfer from my credit union account or collect these premiums with my regular loan payment, according to my financial institution's discretion. As my financial institution you will be fully protected by honoring these payments until you receive written notice from me cancelling this request.

Tommy Bob Hall Jr 11-18-98 Nancy M. Hall 11-18-98
SIGNATURE OF BORROWER #1 DATE SIGNATURE OF BORROWER #2 DATE

(E) TO BE COMPLETED BY LENDER OR SERVICING FIRM

Mortgageholder's Name Patrick Federal Credit Union

Contract No. 037-1485.6

Member Account No. 67-103537220

Original Loan Term 30 yrs.

Months To Run 360

Loan Balance After Last Payment 55951.79

Date Last Payment Was Made JAN. 1 1999

Monthly Principal And Interest \$363.21

Total Monthly Mortgage Payment \$363.21

APR 6.75

Loan Effective Date JAN. 1 1999 (closed NOV. 18, 98)

Is this application to replace or amend an existing Group Mortgage Insurance Certificate? ☐ YES ☒ NO

83F-902-0394

I/we understand that this insurance is optional and is not a condition or requirement for approval of my/our loan. My monthly premium will be \$ 11.11 x 12 = an estimated annual premium of \$ 133.32

HMP DEC 01 1998

CUNA MUTUAL GROUP
CUNA Mutual Insurance Society

P.O. Box 391, 5910 Mineral Point Road
Madison, WI 53701-0391

D0001

2

CERTIFICATION — CERTIFICATE OF INSURANCE

I, Steve B. Elliott, Assistant Vice President, Order Fulfillment, of CUNA Mutual Insurance Society, Madison, Wisconsin, do hereby certify and attest that attached hereto is a true and correct specimen copy of the Member's Application (form number 1206-P1188 (05/96) STD 10/11) and Certificate of Insurance (form number B3d-900-0987) that was issued on January 1, 1999, and subsequently rescinded under the Group Mortgage Insurance Decreasing Term Life or Decreasing Term Life and Disability Policy between Tommy B. Hall of Fayetteville, Pennsylvania and CUNA Mutual Insurance Society.

CERTIFICATION — POLICY

I, Steve B. Elliott, Assistant Vice President, Order Fulfillment, of CUNA Mutual Insurance Society, Madison, Wisconsin, do hereby certify and attest that attached hereto is a true and correct specimen copy of the Credit Insurance Policy (form number B3a-900-0987) issued to the Patriot Federal Credit Union of Pennsylvania, and that said policy is the exact agreement of insurance between the said Credit Union and CUNA Mutual Insurance Society on the 1st day of January 1999.



Steve B. Elliott, Assistant Vice President
Order Fulfillment

State of Wisconsin)
County of Dane) ss

Subscribed and sworn to before me this 21st
day of August, 2001



Notary Public, Dane County, Wisconsin
Date of Expiration June 6, 2004

**CUNA MUTUAL GROUP***CUNA Mutual Insurance Society*

P.O. Box 391 • 5910 Mineral Point Road
 Madison, WI 53701-0391
 Phone: 608/238-5851

**COVERAGE SCHEDULE
 Group Mortgage Insurance
 Decreasing Term Life**

| POLICYHOLDER | CERTIFICATE NUMBER |
|--|--------------------------------|
| PATRIOT FEDERAL CREDIT UNION 800 WAYNE AVE PO BOX 778 CHAMBERSBURG PA 17201-0778 | 00032534 037-1485-6 000 |
| EFFECTIVE DATE OF INSURANCE | TERM OF INSURANCE |
| 01/01/1999 | SEE SCHEDULE OF BENEFITS |
| INSURED DEBTOR (Eligible Debtor No.1) | |
| <p align="center">TOMMY B HALL 517 MT PLEASANT RD FAYETTEVILLE, PA 17222</p> <p align="center">DATE OF BIRTH 05/12/1955</p> <p align="center">INSURANCE COVERAGE Decreasing Term Life <u>YES</u></p> <p align="center">AMOUNT OF INSURANCE ELECTED</p> <p align="center">Initial Amount of Decreasing Term Life \$ <u>55,951.79</u></p> | |

D0013

**CUNA MUTUAL GROUP***CUNA Mutual Insurance Society*

Group Mortgage Insurance Schedule of Life Insurance Benefits

PAGE 1 OF 3

INSURED
TOMMY B HALL

CERTIFICATE NUMBER
00032534

| | |
|--------------------|-------------|
| APR | 6.75% |
| Payment | \$363.21 |
| Balance | \$55951.79 |
| As of | JAN 1, 1999 |
| Coverage requested | \$55951.79 |
| Effective date | JAN 1, 1999 |
| Initial balance | \$55951.79 |
| Months insured | 359 |
| Schedule | 100% |

| PERIOD | BENEFIT | PERIOD | BENEFIT | PERIOD | BENEFIT | PERIOD | BENEFIT |
|----------|----------|----------|----------|----------|----------|----------|----------|
| JAN 1999 | 55960.00 | JAN 2002 | 54030.00 | JAN 2005 | 51670.00 | JAN 2008 | 48780.00 |
| FEB 1999 | 55910.00 | FEB 2002 | 53970.00 | FEB 2005 | 51590.00 | FEB 2008 | 48690.00 |
| MAR 1999 | 55860.00 | MAR 2002 | 53910.00 | MAR 2005 | 51520.00 | MAR 2008 | 48600.00 |
| APR 1999 | 55810.00 | APR 2002 | 53850.00 | APR 2005 | 51450.00 | APR 2008 | 48510.00 |
| MAY 1999 | 55760.00 | MAY 2002 | 53790.00 | MAY 2005 | 51370.00 | MAY 2008 | 48420.00 |
| JUN 1999 | 55710.00 | JUN 2002 | 53730.00 | JUN 2005 | 51300.00 | JUN 2008 | 48330.00 |
| | | | | | | | |
| JUL 1999 | 55660.00 | JUL 2002 | 53670.00 | JUL 2005 | 51230.00 | JUL 2008 | 48240.00 |
| AUG 1999 | 55610.00 | AUG 2002 | 53610.00 | AUG 2005 | 51150.00 | AUG 2008 | 48150.00 |
| SEP 1999 | 55560.00 | SEP 2002 | 53540.00 | SEP 2005 | 51080.00 | SEP 2008 | 48050.00 |
| OCT 1999 | 55510.00 | OCT 2002 | 53480.00 | OCT 2005 | 51000.00 | OCT 2008 | 47960.00 |
| NOV 1999 | 55460.00 | NOV 2002 | 53420.00 | NOV 2005 | 50920.00 | NOV 2008 | 47870.00 |
| DEC 1999 | 55410.00 | DEC 2002 | 53360.00 | DEC 2005 | 50850.00 | DEC 2008 | 47770.00 |
| | | | | | | | |
| JAN 2000 | 55360.00 | JAN 2003 | 53290.00 | JAN 2006 | 50770.00 | JAN 2009 | 47680.00 |
| FEB 2000 | 55300.00 | FEB 2003 | 53230.00 | FEB 2006 | 50690.00 | FEB 2009 | 47580.00 |
| MAR 2000 | 55250.00 | MAR 2003 | 53170.00 | MAR 2006 | 50610.00 | MAR 2009 | 47490.00 |
| APR 2000 | 55200.00 | APR 2003 | 53100.00 | APR 2006 | 50530.00 | APR 2009 | 47390.00 |
| MAY 2000 | 55150.00 | MAY 2003 | 53040.00 | MAY 2006 | 50460.00 | MAY 2009 | 47300.00 |
| JUN 2000 | 55090.00 | JUN 2003 | 52970.00 | JUN 2006 | 50380.00 | JUN 2009 | 47200.00 |
| | | | | | | | |
| JUL 2000 | 55040.00 | JUL 2003 | 52910.00 | JUL 2006 | 50300.00 | JUL 2009 | 47100.00 |
| AUG 2000 | 54990.00 | AUG 2003 | 52840.00 | AUG 2006 | 50220.00 | AUG 2009 | 47000.00 |
| SEP 2000 | 54930.00 | SEP 2003 | 52780.00 | SEP 2006 | 50140.00 | SEP 2009 | 46900.00 |
| OCT 2000 | 54880.00 | OCT 2003 | 52710.00 | OCT 2006 | 50050.00 | OCT 2009 | 46800.00 |
| NOV 2000 | 54820.00 | NOV 2003 | 52640.00 | NOV 2006 | 49970.00 | NOV 2009 | 46700.00 |
| DEC 2000 | 54770.00 | DEC 2003 | 52580.00 | DEC 2006 | 49890.00 | DEC 2009 | 46600.00 |
| | | | | | | | |
| JAN 2001 | 54710.00 | JAN 2004 | 52510.00 | JAN 2007 | 49810.00 | JAN 2010 | 46500.00 |
| FEB 2001 | 54660.00 | FEB 2004 | 52440.00 | FEB 2007 | 49720.00 | FEB 2010 | 46400.00 |
| MAR 2001 | 54600.00 | MAR 2004 | 52370.00 | MAR 2007 | 49640.00 | MAR 2010 | 46300.00 |
| APR 2001 | 54550.00 | APR 2004 | 52300.00 | APR 2007 | 49560.00 | APR 2010 | 46200.00 |
| MAY 2001 | 54490.00 | MAY 2004 | 52230.00 | MAY 2007 | 49470.00 | MAY 2010 | 46090.00 |
| JUN 2001 | 54430.00 | JUN 2004 | 52160.00 | JUN 2007 | 49390.00 | JUN 2010 | 45990.00 |
| | | | | | | | |
| JUL 2001 | 54380.00 | JUL 2004 | 52090.00 | JUL 2007 | 49300.00 | JUL 2010 | 45880.00 |
| AUG 2001 | 54320.00 | AUG 2004 | 52020.00 | AUG 2007 | 49220.00 | AUG 2010 | 45780.00 |
| SEP 2001 | 54260.00 | SEP 2004 | 51950.00 | SEP 2007 | 49130.00 | SEP 2010 | 45670.00 |
| OCT 2001 | 54200.00 | OCT 2004 | 51880.00 | OCT 2007 | 49040.00 | OCT 2010 | 45570.00 |
| NOV 2001 | 54150.00 | NOV 2004 | 51810.00 | NOV 2007 | 48960.00 | NOV 2010 | 45460.00 |
| DEC 2001 | 54090.00 | DEC 2004 | 51740.00 | DEC 2007 | 48870.00 | DEC 2010 | 45350.00 |

D0014

**CUNA MUTUAL GROUP***CUNA Mutual Insurance Society*

Group Mortgage Insurance Schedule of Life Insurance Benefits

PAGE 2 OF 3

INSURED
TOMMY B HALL

CERTIFICATE NUMBER
00032534

APR 6.75%
Payment \$363.21
Balance \$55951.79
As of JAN 1, 1999
Coverage requested \$55951.79
Effective date JAN 1, 1999
Initial balance \$55951.79
Months insured 359
Schedule 100%

| PERIOD | BENEFIT | PERIOD | BENEFIT | PERIOD | BENEFIT | PERIOD | BENEFIT |
|----------|----------|----------|----------|----------|----------|----------|----------|
| JAN 2011 | 45240.00 | JAN 2014 | 40920.00 | JAN 2017 | 35620.00 | JAN 2020 | 29150.00 |
| FEB 2011 | 45140.00 | FEB 2014 | 40780.00 | FEB 2017 | 35460.00 | FEB 2020 | 28950.00 |
| MAR 2011 | 45030.00 | MAR 2014 | 40650.00 | MAR 2017 | 35300.00 | MAR 2020 | 28750.00 |
| APR 2011 | 44920.00 | APR 2014 | 40520.00 | APR 2017 | 35130.00 | APR 2020 | 28540.00 |
| MAY 2011 | 44810.00 | MAY 2014 | 40380.00 | MAY 2017 | 34970.00 | MAY 2020 | 28340.00 |
| JUN 2011 | 44690.00 | JUN 2014 | 40250.00 | JUN 2017 | 34800.00 | JUN 2020 | 28140.00 |
| JUL 2011 | 44580.00 | JUL 2014 | 40110.00 | JUL 2017 | 34630.00 | JUL 2020 | 27930.00 |
| AUG 2011 | 44470.00 | AUG 2014 | 39970.00 | AUG 2017 | 34460.00 | AUG 2020 | 27730.00 |
| SEP 2011 | 44360.00 | SEP 2014 | 39830.00 | SEP 2017 | 34300.00 | SEP 2020 | 27520.00 |
| OCT 2011 | 44240.00 | OCT 2014 | 39690.00 | OCT 2017 | 34120.00 | OCT 2020 | 27310.00 |
| NOV 2011 | 44130.00 | NOV 2014 | 39550.00 | NOV 2017 | 33950.00 | NOV 2020 | 27100.00 |
| DEC 2011 | 44010.00 | DEC 2014 | 39410.00 | DEC 2017 | 33780.00 | DEC 2020 | 26890.00 |
| JAN 2012 | 43900.00 | JAN 2015 | 39270.00 | JAN 2018 | 33610.00 | JAN 2021 | 26680.00 |
| FEB 2012 | 43780.00 | FEB 2015 | 39130.00 | FEB 2018 | 33430.00 | FEB 2021 | 26470.00 |
| MAR 2012 | 43660.00 | MAR 2015 | 38990.00 | MAR 2018 | 33260.00 | MAR 2021 | 26250.00 |
| APR 2012 | 43550.00 | APR 2015 | 38840.00 | APR 2018 | 33080.00 | APR 2021 | 26040.00 |
| MAY 2012 | 43430.00 | MAY 2015 | 38700.00 | MAY 2018 | 32910.00 | MAY 2021 | 25820.00 |
| JUN 2012 | 43310.00 | JUN 2015 | 38550.00 | JUN 2018 | 32730.00 | JUN 2021 | 25600.00 |
| JUL 2012 | 43190.00 | JUL 2015 | 38400.00 | JUL 2018 | 32550.00 | JUL 2021 | 25380.00 |
| AUG 2012 | 43070.00 | AUG 2015 | 38260.00 | AUG 2018 | 32370.00 | AUG 2021 | 25160.00 |
| SEP 2012 | 42950.00 | SEP 2015 | 38110.00 | SEP 2018 | 32190.00 | SEP 2021 | 24940.00 |
| OCT 2012 | 42830.00 | OCT 2015 | 37960.00 | OCT 2018 | 32000.00 | OCT 2021 | 24720.00 |
| NOV 2012 | 42700.00 | NOV 2015 | 37810.00 | NOV 2018 | 31820.00 | NOV 2021 | 24490.00 |
| DEC 2012 | 42580.00 | DEC 2015 | 37660.00 | DEC 2018 | 31640.00 | DEC 2021 | 24270.00 |
| JAN 2013 | 42460.00 | JAN 2016 | 37510.00 | JAN 2019 | 31450.00 | JAN 2022 | 24040.00 |
| FEB 2013 | 42330.00 | FEB 2016 | 37360.00 | FEB 2019 | 31270.00 | FEB 2022 | 23810.00 |
| MAR 2013 | 42210.00 | MAR 2016 | 37200.00 | MAR 2019 | 31080.00 | MAR 2022 | 23580.00 |
| APR 2013 | 42080.00 | APR 2016 | 37050.00 | APR 2019 | 30890.00 | APR 2022 | 23350.00 |
| MAY 2013 | 41960.00 | MAY 2016 | 36890.00 | MAY 2019 | 30700.00 | MAY 2022 | 23120.00 |
| JUN 2013 | 41830.00 | JUN 2016 | 36740.00 | JUN 2019 | 30510.00 | JUN 2022 | 22890.00 |
| JUL 2013 | 41700.00 | JUL 2016 | 36580.00 | JUL 2019 | 30320.00 | JUL 2022 | 22650.00 |
| AUG 2013 | 41570.00 | AUG 2016 | 36420.00 | AUG 2019 | 30130.00 | AUG 2022 | 22420.00 |
| SEP 2013 | 41440.00 | SEP 2016 | 36270.00 | SEP 2019 | 29930.00 | SEP 2022 | 22180.00 |
| OCT 2013 | 41310.00 | OCT 2016 | 36110.00 | OCT 2019 | 29740.00 | OCT 2022 | 21940.00 |
| NOV 2013 | 41180.00 | NOV 2016 | 35950.00 | NOV 2019 | 29540.00 | NOV 2022 | 21700.00 |
| DEC 2013 | 41050.00 | DEC 2016 | 35790.00 | DEC 2019 | 29340.00 | DEC 2022 | 21460.00 |

D0015



**Group Mortgage Insurance
Schedule of Life Insurance Benefits**

PAGE 3 OF 3

INSURED
TOMMY B HALL

CERTIFICATE NUMBER
00032534

APR 6.75%
Payment \$363.21
Balance \$55951.79
As of JAN 1, 1999
Coverage requested \$55951.79
Effective date JAN 1, 1999
Initial balance \$55951.79
Months insured 71
Schedule 100%

| <u>PERIOD</u> | <u>BENEFIT</u> | <u>PERIOD</u> | <u>BENEFIT</u> | <u>PERIOD</u> | <u>BENEFIT</u> | <u>PERIOD</u> | <u>BENEFIT</u> |
|---------------|----------------|---------------|----------------|---------------|----------------|---------------|----------------|
| JAN 2023 | 21220.00 | JUL 2024 | 16610.00 | JAN 2026 | 11520.00 | JUL 2027 | 5880.00 |
| FEB 2023 | 20970.00 | AUG 2024 | 16340.00 | FEB 2026 | 11220.00 | AUG 2027 | 5550.00 |
| MAR 2023 | 20730.00 | SEP 2024 | 16070.00 | MAR 2026 | 10920.00 | SEP 2027 | 5220.00 |
| APR 2023 | 20480.00 | OCT 2024 | 15800.00 | APR 2026 | 10610.00 | OCT 2027 | 4880.00 |
| MAY 2023 | 20230.00 | NOV 2024 | 15520.00 | MAY 2026 | 10310.00 | NOV 2027 | 4550.00 |
| JUN 2023 | 19980.00 | DEC 2024 | 15250.00 | JUN 2026 | 10010.00 | DEC 2027 | 4210.00 |
| JUL 2023 | 19730.00 | JAN 2025 | 14970.00 | JUL 2026 | 9700.00 | JAN 2028 | 3870.00 |
| AUG 2023 | 19480.00 | FEB 2025 | 14690.00 | AUG 2026 | 9390.00 | FEB 2028 | 3530.00 |
| SEP 2023 | 19230.00 | MAR 2025 | 14410.00 | SEP 2026 | 9080.00 | MAR 2028 | 3180.00 |
| OCT 2023 | 18970.00 | APR 2025 | 14130.00 | OCT 2026 | 8770.00 | APR 2028 | 2840.00 |
| NOV 2023 | 18720.00 | MAY 2025 | 13840.00 | NOV 2026 | 8450.00 | MAY 2028 | 2490.00 |
| DEC 2023 | 18460.00 | JUN 2025 | 13560.00 | DEC 2026 | 8140.00 | JUN 2028 | 2140.00 |
| JAN 2024 | 18200.00 | JUL 2025 | 13270.00 | JAN 2027 | 7820.00 | JUL 2028 | 1790.00 |
| FEB 2024 | 17940.00 | AUG 2025 | 12980.00 | FEB 2027 | 7500.00 | AUG 2028 | 1440.00 |
| MAR 2024 | 17680.00 | SEP 2025 | 12690.00 | MAR 2027 | 7180.00 | SEP 2028 | 1080.00 |
| APR 2024 | 17410.00 | OCT 2025 | 12400.00 | APR 2027 | 6860.00 | OCT 2028 | 730.00 |
| MAY 2024 | 17150.00 | NOV 2025 | 12110.00 | MAY 2027 | 6530.00 | NOV 2028 | 370.00 |
| JUN 2024 | 16880.00 | DEC 2025 | 11810.00 | JUN 2027 | 6210.00 | | |

D0016



CUNA Mutual Insurance Society

P.O. Box 391 • 5910 Mineral Point Road
Madison, WI 53701-0391
Phone: 800/937-2644

CERTIFICATE OF INSURANCE

Group Mortgage Insurance Decreasing Term Life or Decreasing Term Life and Disability

Within 15 days after you receive this Certificate, you have the right to return the Certificate to the Policyholder for cancellation and any Monthly Insurance Charge paid by you or your Joint Insured Debtor will be immediately returned.

We certify that while We are paid the premiums for the Group Policy as they become due, that the Insured Debtor and/or Joint Insured Debtor are included for coverage marked in the Schedule, subject to the terms of the Group Policy.

DEFINITIONS

As used in this Certificate, these words have the following meaning:

HE, HIM, HIMSELF or HIS means also she, her, herself or hers.

INJURY means accidental bodily injury which causes the Insured Debtor or Joint Insured Debtor to become Totally Disabled while under the Policy and requires the regular care of a licensed physician other than himself.

INSURED DEBTOR means the Eligible Debtor No. 1 on the application for insurance and who is approved by Us for insurance under the Policy and pays the required Monthly Insurance Charges. The Insured Debtor is also referred to as "you" or "your" in this Certificate.

JOINT INSURED DEBTOR means the Eligible Debtor No. 2 on the application for insurance and who is approved by Us for insurance under the Policy and pays the required Monthly Insurance Charges. The Joint Insured Debtor is referred to as "Joint Insured Debtor" in this Certificate.

MONTHLY MORTGAGE PAYMENT means the normal scheduled monthly payment of principal and interest at the time of application for insurance.

SICKNESS means a disease or illness which causes the Insured Debtor or the Joint Insured Debtor to become Totally Disabled while insured under the Policy and requires the care of a licensed physician other than himself.

TOTAL DISABILITY during the first 12 consecutive months of Total Disability, Total Disability means that the Insured Debtor or Joint Insured Debtor is not able to perform the usual duties of his occupation because of a medically determined Sickness or Injury. After the first 12 consecutive months of Total Disability, the definition changes and requires that the Insured Debtor or Joint Insured Debtor not be able to perform the duties of any occupation for which he is reasonably qualified by education, training or experience.

RECURRENT DISABILITY means successive periods of Total Disability due to the same or related cause unless separated by a 6-month period of continuous full-time work in a gainful occupation.

YOU or YOUR means the Insured Debtor.

WE, US, OUR or THE SOCIETY means the CUNA Mutual Insurance Society of Madison, Wisconsin.

LIFE INSURANCE BENEFIT

We will pay a life insurance benefit, subject to the terms of the Policy, if you or your Joint Insured Debtor die while insured under the Policy. Upon receipt of proof of death of you or your Joint Insured Debtor (whichever occurs first), We will pay the Amount of Insurance Benefit to the Policyholder, to reduce or pay off the Mortgage Loan. Any excess benefits will be paid to the beneficiary named, if any, by you, otherwise to your estate. Payment will completely discharge Our liability to the extent of the amount paid.

AMOUNT OF INSURANCE BENEFIT. The Amount of Insurance Benefit will include accrued loan interest from the date of death to the last loan payment due date prior to death (not to exceed 30 days). It will not include any amounts of principal or other charges on the Mortgage Loan which are due and unpaid or delinquent. The Amount of Insurance Benefit will be calculated under one of the following:

D0017

- If the initial amount of the Insured Debtor's Mortgage Loan is not in excess of \$250,000 and he applied for an Initial Amount of Insurance equal to the initial amount of his Mortgage Loan, the amount of insurance benefit will be the unpaid scheduled principal balance of his Mortgage Loan on the date of his death, or the date of death of the Joint Insured Debtor, whichever occurs first.
- If the initial amount of the Insured Debtor's Mortgage Loan is in excess of \$250,000, and he applied for an Initial Amount of Insurance of \$250,000, the amount of insurance benefit will be equal to \$250,000, divided by the initial amount of his Mortgage Loan, times the unpaid scheduled principal balance of his Mortgage Loan on the date of his death, or the date of death of the Joint Insured Debtor, whichever occurs first.
- If the Insured Debtor applied for an Initial Amount of Insurance which is less than the initial amount of his Mortgage Loan, the amount of insurance benefits will be equal to the Initial Amount of Insurance applied for, divided by the initial amount of his Mortgage Loan, times the unpaid scheduled principal balance of the Mortgage Loan on the date of his death, or the date of death of the Joint Insured Debtor, whichever occurs first.

EXCLUSIONS. We will return the Monthly Insurance Charges paid by you and no death benefit is payable if you or your Joint Insured Debtor dies as the result of:

- a. suicide, while sane or insane, within 2 years after becoming insured under the Policy; or
- b. an act of war; or
- c. air travel other than as a pilot, crew member or passenger on a scheduled flight on a commercial airline.

In the case of joint life coverage, the refund of premium will equal the difference between the premium actually charged for the joint life coverage and the premium that would have been charged if only single life coverage had been provided at the time the insurance was issued. Life insurance on the survivor may continue and the joint life certificate which was issued will be replaced with a single life certificate.

JOINT LIFE INSURANCE. In the case of joint life insurance, the Amount of Insurance Benefit applies to the first of you or your Joint Insured Debtor to die. Only one death benefit, however, will be paid and insurance on the survivor will terminate.

SIMULTANEOUS DEATH. If both you and your Joint Insured Debtor die simultaneously, the Amount of Insurance Benefit will be divided equally between you and your Joint Insured Debtor. Any excess benefits will be paid to the beneficiary named, if any, by you, otherwise to your estate.

PROOF OF LOSS. The Policyholder will furnish proof of death to Us. The Policyholder must also furnish a statement as to the amount of the indebtedness of the Mortgage Loan.

AUTOPSY. We, at our own expense, have the right to require an autopsy in case of death, if it is not forbidden by law.

DISABILITY INSURANCE BENEFIT

If disability insurance has been elected and you or your Joint Insured Debtor become Totally Disabled while insured under the Policy, We will pay a Monthly Disability Benefit subject to the terms of the Policy, when We receive written proof of Total Disability. All benefits under the Policy will be paid to the Policyholder to reduce or extinguish the Mortgage Loan.

NON-RETROACTIVE BENEFITS. You or your Joint Insured Debtor must be Totally Disabled for more than the period stated in the Schedule. Payment will be calculated beginning with the day shown in the Schedule.

AMOUNT OF INSURANCE BENEFIT. The Monthly Disability Benefit that We will pay for you or your Joint Insured Debtor's Total Disability will be the amount stated in your application for insurance under the Policy and which is also stated in the Schedule. This amount will remain the same while you or your Joint Insured Debtor are insured under the Policy, subject to the Monthly Disability Benefit. Payment Period provision and your right to reapply for a new amount of Monthly Disability Benefit.

MONTHLY DISABILITY BENEFIT PAYMENT PERIOD. The Monthly Disability Benefit payments are subject to a Maximum Number of Months, for any period of Total Disability. If you and your Joint Insured Debtor are both insured, this maximum will be applied separately to each of you. The limitations are as follows:

| If Total Disability Begins | Maximum Number of Months of Monthly Disability Benefit Payments |
|--|--|
| Prior to age 30 | 66 months |
| On or after age 30 and prior to age 35 | 48 months |
| On or after age 35 and prior to age 40 | 36 months |
| On or after age 40 and prior to age 45 | 24 months |
| On or after age 45 and prior to age 50 | 18 months |
| On or after age 50 and prior to age 55 | 12 months |
| On or after age 55 and prior to age 65 | 6 months |

Payment of the Monthly Disability Benefit to you and your Joint Insured Debtor for the Maximum Number of Months as stated above, will discharge Our liability to the extent of the amount paid for that period of Total Disability.

RECURRENT DISABILITY. If your Total Disability or that of your Joint Insured Debtor recurs WITHIN 6 MONTHS after recovery from that period of Total Disability, We will consider this a continuation of that period of Total Disability. However, if such Total Disability recurs MORE THAN 6 MONTHS after recovery, We will consider it a new period of Total Disability.

EXCLUSIONS. We will not pay a benefit if you or your Joint Insured Debtor become Totally Disabled as the direct or indirect result of:

- a. an intentionally self-inflicted injury; or
- b. normal pregnancy; or
- c. an act of war, or participation in a riot, crime or felony; or
- d. air travel other than as a pilot, crew member or passenger on a scheduled flight on a commercial airline.

TERMINATION OF DISABILITY BENEFIT PAYMENTS. Our Monthly Disability Benefit payments for Total Disability will terminate on the earliest of the following dates. This provision applies separately to you and to your Joint Insured Debtor.

- a. the date the Mortgage Loan is paid off; or
- b. the date you or your Joint Insured Debtor are not Totally Disabled any more; or
- c. the date We have made payments to the Maximum Number of Months of Disability Benefit Payments, based on the age when disability began; or
- d. the date of death.

PROOF OF DISABILITY. You must contact your credit union or the Policyholder about a Total Disability claim when you or your Joint Insured Debtor are eligible for benefits. Your credit union or the Policyholder will provide you with claim forms or you can simply send Us written proof of Total Disability. That proof must show the date and the cause of the Total Disability and how serious it is, and it must be signed by a physician or a chiropractor. The initial proof should be for the initial period of Total Disability, after you or your Joint Insured Debtor have been Totally Disabled for more than the period stated in the Schedule. After that, We will require proof of continued Total Disability, from time to time.

You must send proof to Us within 90 days after Total Disability stops. If you cannot send proof to Us within 90 days, you must do so as soon as you can. Unless you have been legally incapable of filing proof of Total Disability, We won't accept it if it is filed after 1 year from the time it should have been filed. You can't start any legal action until 60 days after you send Us proof of your Total Disability and you can't start any legal action more than 3 years after you send the proof.

PHYSICAL EXAMINATION. We have the right to have a physician examine you or your Joint Insured Debtor as often as may be reasonably required while the claim continues.

REAPPLICATION FOR INCREASE IN THE MONTHLY DISABILITY BENEFIT. You and Your Joint Insured Debtor may reapply at any time (except if either you or your Joint Insured Debtor are Totally Disabled) for an increase in the amount of Monthly Disability Benefit. To reapply, you and your Joint Insured Debtor must be able to meet the Eligibility requirements for insurance under the Policy, and submit a new application for insurance which must be approved by Us. If the application for insurance is approved by Us, the increase in the amount of Monthly Disability Benefit and the new Monthly Insurance Charge for you and your Joint Insured Debtor will become effective on the date stated by Us (in accordance with the Effective Date of Insurance provision of the Policy). Such increase in the amount of Monthly Disability Benefit will be treated as new insurance and will be subject to all of the terms of the Policy, including the Exclusions section of the Disability Insurance and General Provisions section.

TERMINATION OF LIFE AND DISABILITY INSURANCE

Insurance on you or your Joint Insured Debtor will terminate on the earliest of the following:

- a. the date the Mortgage Loan is paid in full; or
- b. the date the Policy is terminated; or
- c. 31 days after the due date of any Monthly Insurance Charges that are not paid by you or your Joint Insured Debtor; or
- d. the date of transfer of all of your interest or that of your Joint Insured Debtor in the loan security; or
- e. for your disability insurance on attainment of your 65th birthday; for disability insurance on your Joint Insured Debtor, on attainment of his 65th birthday; or
- f. the date of your death or that of your Joint Insured Debtor.

Termination of insurance will be without prejudice to any valid claim arising prior to termination.

RIGHT TO CONVERT. If the life insurance on you and your Joint Insured Debtor terminates for any reason except non-payment of your monthly insurance charge, and you continue to be indebted on the loan for which you were insured, you will be entitled to convert the amount of life insurance that was terminated to an individual policy of life insurance, other than term, issued by Us. In order to convert coverage without evidence of insurability, application must be made to Us for the individual policy within 31 days of termination of the group insurance.

Any individual policy of life insurance will be for an amount equal to or smaller than the amount of life insurance that was in effect on the date of termination of the group insurance. The premium rate for the individual policy of life insurance shall be at Our rate then applicable to the:

- a. form and amount of the individual policy, and
- b. class of risk to which you belong, and
- c. your attained age on the effective date of such individual policy.

If you or your Joint Insured Debtor dies during this 31 day conversion period, and before an Individual policy is effective, We will pay the amount of life insurance which you would have been entitled to have issued to you on an individual policy basis, whether or not you had applied for the individual policy or paid the first premium.

REINSTATEMENT OF LIFE INSURANCE

If you or your Joint Insured Debtor do not pay a required Monthly Insurance Charge within 31 days of its due date, insurance will terminate. Insurance that terminated because the required Monthly Insurance Charge was not paid during the 31 day grace period, may be reinstated without evidence of insurability if all Monthly Insurance Charges that are past due are paid during the 31 days immediately following the grace period. This is called the reinstatement period.

If insurance is desired again after the 31 day period for reinstatement has expired, a new application for insurance must be submitted to Us. The application will be treated as a new application for insurance, it must be approved by Us and it will be subject to all of the terms of the Policy.

If a debtor has requested his insurance to be reinstated and subsequently, a valid death claim is incurred during the reinstatement period, any Monthly Insurance Charges that are past due will be deducted from our benefit payment.

GENERAL PROVISIONS — LIFE AND DISABILITY INSURANCE

The Group Policy, the Application for the Group Policy and any attached Rider or Endorsement, is the entire insurance contract. All statements made by you or your Joint Insured Debtor are considered representations and not warranties. No statement can be used to void this insurance or deny a claim unless that statement is signed by you or your Joint Insured Debtor and a copy given to you or your Joint Insured Debtor. After 2 years from the Effective Date of insurance for you and your Joint Insured Debtor, no statement made by you or your Joint Insured Debtor can be used to void this insurance or deny a claim. If coverage on one of the Joint Insured Debtor's is terminated because of contestability, the appropriate portion of the premium will be returned and coverage on the other Joint Insured Debtor will continue on a single debtor basis. The refund of premium will equal the difference between the premium actually charged for the joint coverage and the premium that would have been charged if only single coverage had been provided at the time the insurance was issued. The joint coverage certificate which was issued will then be replaced with a single coverage certificate.

MISSTATEMENT OF AGE OR OTHER DATA

If the date of birth, amount of loan, amount of insurance or any other relevant data is found to be misstated, such that insurance would not have been issued had the true date of birth or other data been stated and the Society discovers this during the contestable period, Our liability will be limited to a return of premiums paid by the Debtor.

If a misstatement of age is discovered after the contestable period, The Society will make the following adjustments:

Life Insurance

If the Debtor's true age is 69 or less, the monthly insurance charge will be adjusted to reflect his true age.

If the Debtor's true age is 70 or over, the monthly insurance charge will be adjusted to reflect the monthly insurance charge for age group 64-69. In addition, there will be a reduction in the Benefit as follows:

| <u>True Age</u> | <u>Benefit Reduction</u> |
|------------------------|---------------------------------|
| 70-74 | 35% |
| 75-79 | 60% |
| 80 and over | 75% |

Disability Insurance

If the Debtor's true age is 56 or over, The Society's liability will be limited to a refund of all monthly insurance charges paid by the Debtor.

If the Debtor's true age is 56, benefits will be adjusted to reflect his true age, and will conform to the "Monthly Disability Benefit Payment Period" provision of the Policy.

MONTHLY INSURANCE CHARGE. and your Joint Insured Debtor are required to pay a Monthly Insurance Charge in order to keep the insurance in force. The Monthly Insurance Charge is stated on your application for insurance which is attached to this Certificate. We have the right to change the premium rate applicable to insurance provided under the Policy.

For Life Insurance, the Monthly Insurance Charge is based on your age at the time you applied for insurance and the amount of insurance requested. For Disability insurance, the Monthly Insurance Charge is determined by multiplying the monthly rate by the amount of your Monthly Disability Benefit.

The Policy provides for a reduction in your Monthly Insurance Charge for life insurance if there is an accumulated prepayment of your Mortgage Loan of at least 5%. At the time you make any prepayment, call attention to your insurance so that your Monthly Insurance Charge for life insurance can be refigured.

MAXIMUM LIMITATIONS. The maximum limitations are only an initial eligibility requirement and will not be used as the basis to deny a valid claim. If insurance is issued to a Debtor in excess of the maximum limitations, The Society has the right to make an adjustment within 60 days from the Effective Date of Insurance, provided that no valid life claim is incurred or that the Debtor has not completed the elimination period, at the time of the adjustment. The Society will refund any excess insurance charge paid by the Debtor.

CONFORMITY WITH STATE STATUTES. Any part of the Group Policy which, on the Policy Date of the Group Policy, conflicts with the statutes of the state where the Group Policy was delivered is changed to conform to the minimum standards of those statutes.

A handwritten signature in black ink, appearing to read "Michael B. Kitch".

PRESIDENT

11-10-99 15:27

From-PATRIOT FEDERAL CREDIT UNION

7172636020

T-832 P.02/03 F-105

CUNA MUTUAL GROUP**CUNA Mutual Insurance Society**P.O. Box 1621 • 53001 Madison, WI 53701-1621
Phone: 608/221-5223 • Fax: 608/223-3230563 825959 11/04/1999
HMPM:GROF

102481

HOME MORTGAGE INSURANCE CLAIM NOTICE

CHECK ONE: ☒ Death Claim
 Date of Death 11-4-1999
 Loan payment due date prior to death 11-1-99
 Attach a copy of the death certificate to this form.

☐ Disability Claim
 Date of Disability _____
 Loan balance on date of disability _____
 We will forward a claim form to the member.

Member's Name Tommy Bob Hall II
 Address 517 Mt. Pleasant Rd.
Fayetteville PA 17222
 Birthdate 5-12-55

037-1485-6
 Patriot Fed. Cr. Union
 Contract Number 067-0103537220
 Policy/Certificate Number 00032534
 M/TG
 Account Number 067-0103537220

NOTICE: Any person who knowingly and with intent to injure, defraud or deceive any insurance company, submits a statement of claim containing any false, incomplete or misleading information is guilty of a crime, and in some states subject to criminal or civil penalties, or guilty of a felony.

Patriot Federal Credit Union

FULL NAME OF CREDIT UNION

P.O. Box 778, 800 Wayne Ave.

NUMBER AND STREET

Chambersburg PA 17201

CITY

STATE

ZIP CODE

AREA CODE - TELEPHONE NUMBER

CREDIT UNION OFFICE HOURS

Jeanette Duquette

SIGNATURE

TITLE

(Mr., Mrs., Miss, Ms.)

PRINT OR TYPE NAME OF ABOVE

☐ Check here if you need an additional supply of this form.

TOTAL P.01

Received 11-10-99 15:05

From-

To-PATRIOT FEDERAL CRED Page 01

D0043

11-10-89 15:27

From-PATRIOT FEDERAL CREDIT UNION

7172536028

T-832 P.03/03 F-105

This is to certify that the information here given is correct copy made from the original
Local Registrar. The original certificate will be forwarded to the State Vital Records Office for permanent filing.

WARNING: It is illegal to duplicate this copy by photostat or photograph.

Fee for this certificate, \$2.00



Lucille S. Miller
Local Registrar

S063854

No.

November 4, 1999
Date

COMMONWEALTH OF PENNSYLVANIA - DEPARTMENT OF HEALTH - VITAL RECORDS
CERTIFICATE OF DEATH

REPORT
to
BIRTHDAY
BOOK

28

| | | | | | | | |
|--|--|--|--|---|--|---|--|
| Name of deceased Tommy Bob Hall II | | Sex Male | | Date of birth 563 - 82 - 5959 | | Date of death Nov. 4, 1999 | |
| Place of birth Franklin, Fayetteville | | Age at death 39 | | Cause of death Heart Disease | | Manner of death Natural | |
| Occupation Truck Driver | | Transportation Transportation | | Marital status Married | | Spouse's name Nancy H. Drake | |
| Residence at time of death 517 Mt. Pleasant Rd., Fayetteville, Pa. 17222 | | Residence at time of birth Franklin, Fayetteville | | Residence at time of death Franklin, Fayetteville | | Residence at time of birth Franklin, Fayetteville | |
| Name of informant Nancy Hall | | Relationship to deceased Wife | | Signature of informant <i>Nancy Hall</i> | | Date of report 11/5/99 | |
| Signature of registrar <i>Lucille S. Miller</i> | | Signature of physician <i>Robert M. Melman</i> | | Signature of medical examiner <i>Robert M. Melman</i> | | Signature of coroner <i>Robert M. Melman</i> | |
| Medical examiner's name Robert M. Melman | | Medical examiner's address 144 South Eighth St., Suite 111, Chambersburg, PA 17201 | | Medical examiner's phone 717-326-1371 | | Medical examiner's fax 717-326-1371 | |
| Medical examiner's title Medical Examiner | | Medical examiner's license 144 South Eighth St., Suite 111, Chambersburg, PA 17201 | | Medical examiner's date of birth 11/5/99 | | Medical examiner's date of death 11/5/99 | |

D0005

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v.

Case No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

* * * * *

DEPOSITION OF BRENDA LARSON

Thursday, November 1, 2001

1:28 o'clock p.m.

Reported by: LISA A. CREERON

MADISON **F**REELANCE **R**EPORTERS

131 W. Wilson St.

Madison, Wisconsin 53703

(608) 255-8100

PAGE 1 SHEET 1

IN THE UNITED STATES DISTRICT COURT
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Defendants.

DEPOSITION OF BRENDA LARSON

Thursday, November 1, 2001

1:28 o'clock p.m.

Reported by: LISA A. CREERON

PAGE 2

2

1 DEPOSITION OF BRENDA LARSON, a
2 witness in the above-entitled matter, taken at the
3 instance of the plaintiff, wherein Nancy Hall is the
4 plaintiff and CUNA Mutual Group, et al., are the
5 defendants, pending in the United States District
6 Court for the Middle District of Pennsylvania,
7 pursuant to notice, before LISA A. CREERON, a
8 Registered Professional Reporter and Notary Public in
9 and for the State of Wisconsin, at Melli, Walker,
10 Pease & Ruhly, Attorneys at Law, 10 East Doty Street,
11 in the City of Madison, County of Dane, and State of
12 Wisconsin, on the 1st day of November, 2001, commencing
13 at 1:28 o'clock p.m.

A P P E A R A N C E S

15 STEPHEN R. PEDERSEN,
16 Attorney at Law, 214 Senate Avenue, Suite 602,
17 Camp Hill, Pennsylvania, appearing on behalf of
18 the plaintiff;

18 MICHAEL R. KELLEY,
19 McNEES, WALLACE & NURICK, Attorneys at Law,
20 100 Pine Street, P. O. Box 1166,
21 Harrisburg, Pennsylvania 17108, appearing
22 on behalf of the defendants.

23 ALSO PRESENT: MARK RICHARDSON

24 (Original transcript is filed with Attorney Pedersen)

25

PAGE 3

3

I N D E X

| | | |
|---|--|------------|
| 1 | Examination by: | Page |
| 2 | Attorney Pedersen | 4 |
| 3 | Attorney Kelley | 85 |
| 4 | Exhibits Nos.: | Identified |
| 5 | 1 - Chronology prepared by the witness | 20 |

BRENDA LARSON,

called as a witness, being first duly
sworn in the above cause, testified
under oath as follows:

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PAGE 4

4

1 MR. KELLEY: During the
2 deposition of Mr. Stel we produced a number of
3 documents, including the October 18, 2001 letter
4 from Attorney General Mike Fisher, the form
5 that's used for the insurance fraud section of
6 the Pennsylvania Attorney General's Office, the
7 names and information of attorney general
8 personnel, an e-mail regarding an e-mail
9 bulletin from the Pennsylvania insurance
10 department, an April 4, 2000 letter from the
11 Office of the Attorney General and then a number
12 of pages that look like insurance statutory
13 language and then some internal CUNA documents
14 regarding reporting of insurance fraud, and then
15 it looks like some articles or Law Review
16 materials regarding reporting of insurance
17 fraud.

And those I just wanted to note for the
record, those materials were produced -- I
received them for the first time yesterday, and
so we produced those today.

The usual stipulations for Brenda's
deposition?

MR. PEDERSEN: That's fine.

MR. KELLEY: With the exception

25

1 of she'll read and sign the deposition.
 2 MR. PEDERSEN: That's fine.
 3 EXAMINATION
 4 BY MR. PEDERSEN:
 5 Q Ms. Larson, please state your full name for the
 6 record.
 7 A Brenda Jean Larson.
 8 Q And that's Larson, L-A-R-S-O-N?
 9 A Correct.
 10 Q Now, I know it was sent through your counsel, but did
 11 you receive the notice of deposition for your
 12 deposition today?
 13 A Written notice or oral?
 14 Q Yes, written notice.
 15 A No.
 16 Q The deposition notice indicates that you're to bring
 17 all records and materials which in any way relate to
 18 the case. Did you bring all of your records and
 19 materials that relate to the Hall claim file either
 20 through you or your counsel?
 21 A Yes, I did.
 22 Q Are there any things that you've left out from
 23 bringing with you today, like computer entries,
 24 loose-leaf material that you may have referred to or
 25 telephone message logs or messages?

1 A Not that I'm aware of, no.
 2 Q Okay. So you believe that you brought everything
 3 with you today?
 4 A I believe so.
 5 Q And is this your three-ring binder or the one
 6 provided by counsel?
 7 MR. KELLEY: That's hers, and
 8 we've gone through it and she's produced
 9 everything that's in there to me, which I've
 10 produced to you.
 11 MR. PEDERSEN: Okay. I just want
 12 to make sure we're starting with the same sets
 13 of documents, that there aren't any missing
 14 documents.
 15 MR. KELLEY: Well, as we did go
 16 through it, you can certainly see if there's
 17 anything that would fit that bill, but we think
 18 we've produced everything to you.
 19 Q Okay. I'd like to get some background information,
 20 first of all. What is your position currently with
 21 CUNA Mutual?
 22 A I'm the credit insurance underwriter.
 23 Q How long have you been the credit insurance
 24 underwriter?
 25 A Since October of 1999.

1 Q Is that for all types of insurance?
 2 A It's for credit insurance.
 3 Q Credit insurance is different than the mortgage
 4 protection insurance?
 5 A No, it's the same.
 6 Q The same. Why is it called credit insurance?
 7 A Because it's insurance on a line of credit. Or in
 8 the event of the home mortgage, it's on the actual
 9 mortgage.
 10 Q Do I understand under a mortgage protection policy
 11 through CUNA if a payment is made, it's made directly
 12 to the mortgage company?
 13 A A payment for insurance?
 14 Q For benefits, for a payout under a policy.
 15 A The beneficiary is the credit union.
 16 Q And that would be to pay off the outstanding loan,
 17 and so the mortgage coincides with the amount that
 18 still exists on the mortgage, is that right?
 19 A Correct.
 20 Q And it's your understanding that when the mortgage
 21 payout is made under a claim for benefits that the --
 22 that extinguishes the loan or the mortgage?
 23 A In most cases.
 24 Q So no more house payments would need to be made?
 25 A In most -- correct, in most cases I would agree.

1 Q And was that also in the Hall case, that was your
 2 understanding?
 3 A I don't know what their loan balance was at the
 4 credit union.
 5 Q You don't know whether or not the Halls at the time
 6 they purchased a new home obtained the insurance
 7 through CUNA Mutual and their credit union for the
 8 total amount of their mortgage?
 9 A I don't know it to be the total amount, no.
 10 Q Do you know the custom and practice at CUNA Mutual
 11 with respect to the insured amount? Is it typically
 12 the total amount of the outstanding mortgage?
 13 A This particular product, they can insure a minimum of
 14 half. So they have to at least insure one-half of
 15 the mortgage.
 16 Q What did you do prior to October '99 when you became
 17 the credit insurance underwriter?
 18 A Prior to that I was a medical claims examiner with
 19 CUNA Mutual.
 20 Q CUNA offers a line of medical insurance?
 21 A They did at one time.
 22 Q What was your role as the claims manager in the
 23 medical section?
 24 A It wasn't the claims manager. I was a claim -- did I
 25 say claims manager?

1 Q I'm sorry, maybe I miswrote it. But prior to --
 2 A I was a claims examiner.
 3 Q Examiner. What was your duty with respect to being a
 4 medical claims examiner for CUNA Mutual prior to
 5 October of '99?
 6 A My duties were to review and process claims according
 7 to the schedule of benefits of the policy.
 8 Q How long or over what period of time were you a
 9 medical claims examiner for CUNA Mutual?
 10 A For CUNA Mutual, since 1997, August of 1997.
 11 Q Do you have any medical background?
 12 A I graduated from the University Hospital's school of
 13 radiology technology.
 14 Q Which university?
 15 A Madison. And it was -- can I just --
 16 Q Sure.
 17 A It was the University Hospital school of radiology
 18 technology.
 19 Q How many years did you attend that school?
 20 A Two years.
 21 Q Did you obtain a degree?
 22 A I did not.
 23 Q Was there a degree offered?
 24 A There was.
 25 Q What was the degree that was offered?

1 A X-ray technician.
 2 Q Why didn't you obtain the degree?
 3 A I decided that I did not want to pursue it.
 4 Q In your studies towards the x-ray technician degree,
 5 did you have any experience reading pathology
 6 reports?
 7 A No.
 8 Q Have you ever had any training with respect to
 9 reading pathology reports?
 10 A No.
 11 Q Or looking microscopically at resections of moles?
 12 A No.
 13 Q How about learning medical technology as it relates
 14 to cancer and moles and microscopic findings?
 15 MR. KELLEY: I'm sorry, what's
 16 your question with regard to this?
 17 Q Any training with respect to that.
 18 A With respect to medical technology?
 19 Q Terminology.
 20 A Terminology, certainly.
 21 Q As they relate to moles, cancer and microscopic
 22 findings.
 23 A Terminology, yes.
 24 Q What's your understanding of what a dysplastic nevus
 25 is?

1 A My understanding of a dysplastic nevus is that it is
 2 a benign nevus with characteristics similar to
 3 melanoma.
 4 Q When you say a benign finding, a finding of
 5 dysplastic nevus is not the same in your mind as
 6 cancer?
 7 A That would be correct.
 8 Q In fact, it's the opposite; it's something
 9 noncancerous, you said benign?
 10 MR. KELLEY: If the opposite of
 11 cancerous is noncancerous, I guess that's true.
 12 Q The term malignant and benign, aren't those
 13 opposites?
 14 A Yes.
 15 Q And dysplastic nevus is a benign finding, isn't it?
 16 A It is.
 17 Q And that would be the opposite of a malignant
 18 finding?
 19 A Correct.
 20 Q So dysplastic nevus is not cancer?
 21 A That would be correct.
 22 MR. KELLEY: I'm still not sure
 23 that it's the opposite of cancer.
 24 MR. PEDERSEN: Only if salt is
 25 the opposite of pepper.

1 MR. KELLEY: This is off the
 2 record.
 3 (Discussion off the record)
 4 Q Where did you obtain that understanding as to the
 5 definition of dysplastic nevus?
 6 A I would not be able to pinpoint one area of where I
 7 found that out or learned that.
 8 Q You've never taken any classes specifically on
 9 microscopic findings for tumors?
 10 A Not specific classes on tumors, no.
 11 Q Have you had some other education on tumors and tumor
 12 development?
 13 A Well, I certainly go to continuing education
 14 seminars, and I've also had some continuing education
 15 studies that it is mentioned.
 16 Q Have you had specific continuing education studies
 17 with respect to melanoma?
 18 A Yes.
 19 Q When was the last one that you attended?
 20 A I wouldn't have an exact date here.
 21 Q Not referring to date, but time frame. Within the
 22 last three years have you attended any seminars
 23 dealing with melanoma?
 24 A Are you asking specifically melanoma or in which
 25 melanoma was discussed?

1 Q In which melanoma was discussed.
 2 A I would say within the last three years.
 3 Q Do you keep seminar material?
 4 A Some.
 5 Q Do you have any seminar material in your office that
 6 relates to melanoma or dysplastic nevus?
 7 A I don't recall here. I would have to check.
 8 Q Don't throw any of them away.
 9 A Okay.
 10 Q This may be an area of inquiry later. We'll
 11 determine whether to request certain documents from
 12 training seminars that you attended that relate to or
 13 discuss dysplastic nevus or melanoma, okay?
 14 A All right.
 15 Q What's your understanding of the term melanocytic
 16 cells?
 17 A They are a pigmented cell.
 18 Q Cancerous or not cancerous?
 19 A Not cancerous.
 20 Q Who is your supervisor at CUNA Mutual?
 21 A Currently it's Deb Haglund.
 22 Q How do you spell Haglund?
 23 A H-A-G-L-U-N-D.
 24 Q How long has Deb Haglund been your supervisor?
 25 A I would say approximately six months.

1 Q Who was the supervisor before that?
 2 A Jody Breese.
 3 Q How long was Jody Breese your supervisor?
 4 A I would say approximately six months prior to
 5 Deb Haglund.
 6 Q And who was the supervisor before that?
 7 A Rich Fisher.
 8 Q How long was Mr. Fisher your supervisor?
 9 A I would say from October '99, and again this is a
 10 guess, through October 2000.
 11 Q Because I want to be complete, covering the periods
 12 of the application and the claim process, who was the
 13 supervisor before Rich Fisher?
 14 A That would have been the last time frame within the
 15 underwriting department. Do you want me to go back
 16 into my claim history?
 17 Q No. You joined the underwriting department sometime
 18 in October of '99, is that right?
 19 A That's correct.
 20 Q So you were not in the underwriting department when
 21 Mr. Hall filled out the initial application?
 22 A That is correct.
 23 Q And the first then that you had any contact with the
 24 Hall claim file would have been at the end of '99?
 25 A That is correct.

1 Q And that would have been two months, approximately
 2 two months after you first joined the credit
 3 insurance underwriting division?
 4 A Correct.
 5 Q Were you considered in training at that point?
 6 A I was.
 7 Q There's some reference in the file, isn't there, to
 8 you being in training?
 9 A Yes.
 10 Q What were you in training for, to become a --
 11 A Credit insurance underwriter.
 12 Q Who was training you? Was it Rich Fisher?
 13 A I was being mentored by Bill Nardi.
 14 Q How do you spell Nardi?
 15 A N-A-R-D-I.
 16 Q Who is Bill Nardi?
 17 A He is an underwriter with CUNA Mutual Group.
 18 Q Is he still there?
 19 A Yes, he is.
 20 Q Do you know which area he works in now?
 21 A He works for our Waverly division of CUNA Mutual Life
 22 Insurance.
 23 Q I take it that's not in Madison?
 24 A Correct.
 25 Q That's in Iowa?

1 A That's in Waverly, Iowa. Well, can I just clarify
 2 that? He is in Madison. He underwrites for the
 3 product in Waverly.
 4 Q Okay. So he works out of the Madison offices?
 5 A Correct.
 6 Q Good. Do you have a specific recollection of being
 7 involved in the Hall claim process?
 8 A Specific recollection? I guess I need you to
 9 clarify.
 10 Q Do you only recall what's in the records, or do you
 11 specifically recall sitting down one day and in the
 12 process of reviewing the claim coming up with certain
 13 conclusions?
 14 MR. KELLEY: And your question is
 15 do you remember any part of the process?
 16 MR. PEDERSEN: Yes.
 17 MR. KELLEY: Not every part of
 18 the process?
 19 MR. PEDERSEN: That's right.
 20 A Any part of the process, yes, I would say. Not every
 21 part of the process.
 22 Q What's your first recollection of the process?
 23 A Do you mean the first one that comes to mind or the
 24 first one within the time --
 25 Q First one chronologically.

1 A Okay. Now you're asking me to remember -- from my
2 memory what do I recall?

3 Q Let me try to help. I deal with people who deal with
4 large volumes of claims or files or doctors who have
5 many patients. Sometimes they recall the patients,
6 sometimes they don't. Sometimes they just go on
7 their records.

8 And so I'm asking if you have your own
9 independent recollection of the -- any part of the
10 claim process that the Halls were involved with other
11 than what's just contained in the file.

12 A I guess I have a recollection of the process in its
13 entirety, but not a specific recollection of any one
14 specific thing.

15 Q How many files would you typically review in a month?

16 A For underwriting or for a claim investigation?

17 Q Were you doing both at this time?

18 MR. KELLEY: Objection. What's
19 this time mean?

20 MR. PEDERSEN: In December of
21 '99.

22 A Was I underwriting and -- I guess as the underwriter,
23 if a claim was referred to me, then that was within
24 my job description.

25 Q I'm trying to get some sense of how many files,

1 either claim files or underwriting files you were
2 evaluating over a period of time, either month or two
3 months at the time the Hall file came to you.

4 A Okay, that helps. Underwriting files, I would say
5 approximately 50 per month.

6 Q And claim files?

7 A I would say from my best recollection there were no
8 other claim files other than this one.

9 Q Was this the -- this wasn't the first claim file that
10 you had been involved with, is it, with CUNA Mutual?

11 A With CUNA Mutual, yes.

12 Q It was the very first?

13 A I think I said the first.

14 Q Okay. Not that there's any way to distinguish
15 between the very first --

16 A That's right.

17 Q I just wanted to make sure. You surprised me. Was
18 there someone at CUNA Mutual who was helping you
19 specifically address this of your first claim files?

20 A Yes.

21 Q Who was that?

22 A Bill Nardi.

23 Q How is it within CUNA Mutual that you came to get the
24 Hall file?

25 A As the credit insurance underwriter for the home

1 mortgage protection product, the claim was referred
2 to me.

3 Q Who referred it to you?

4 A I made a notation that it was referred to me from our
5 claim department.

6 Q You're referring to a chronological history of some
7 events, is that right?

8 A That's correct.

9 Q When did you prepare that?

10 A February of 2000.

11 Q Now, that's something I have not seen or been
12 provided.

13 A Okay.

14 Q I'd like to have a copy of that.

15 MR. KELLEY: Well, I need to look
16 at it first.

17 Q Let me ask a few questions about that sheet.

18 A Okay.

19 Q Why did you prepare that chronology?

20 MR. KELLEY: Wait a second.
21 Before you do that, let me look at it here.

22 MR. PEDERSEN: Okay, sure.

23 MR. KELLEY: I want to -- I mean
24 I need to talk to her and see if this was
25 prepared in anticipation of litigation or not.

1 Off the record.
2 (Discussion off the record)
3 (Short recess is taken)

4 Q We've been discussing a document that we've now
5 circulated copies of. I'm going to have this marked
6 as Exhibit 1 to this deposition.

7 (Exhibit 1 is marked for identification)

8 Q What were the circumstances under which this document
9 was prepared?

10 A This document was prepared so that I had a
11 chronological order of what happened and how it
12 happened.

13 Q Did you make the entries contemporaneously with the
14 events or at some time later recreated the events?

15 A I believe I made a Word document as you see here
16 after the file was closed.

17 Q How was it that you made this list after the file was
18 closed, by going through the file or --

19 A No, from a piece of paper that I had written on while
20 I was working through the file.

21 Q Do you still have that piece of paper?

22 A I don't believe so, no.

23 Q You put that piece of paper onto a computer file
24 instead?

25 A That would be correct.

1 Q This has a date. I don't know if it's a computer
2 generated date at the top. Is it August of 2001?
3 A Correct.
4 Q Is that when the document was printed out?
5 A No.
6 Q What does that date reflect?
7 A That date would most likely reflect the date that I
8 faxed it to our legal area.
9 Q Why did you fax it to the legal area?
10 A Our legal area requested all information on this
11 particular claim file.
12 Q Do you know why?
13 A At that point I was aware that there was a lawsuit
14 filed.
15 Q How is it that you know when the document was
16 prepared, typed into the computer?
17 A Just from my own recollection.
18 Q And you're sure that it wasn't typed into the
19 computer after you knew a lawsuit was filed?
20 A Positively.
21 Q How is it that you recall that?
22 A Just because I recall doing this after we had
23 completed the actual claim file.
24 Q Is there a protocol within CUNA Mutual to always do
25 this when a claim file is closed, to make a

1 the claim and the death certificate?
2 A I reviewed the member's application and the death
3 certificate.
4 Q What were you looking for? What was the purpose for
5 reviewing those?
6 A The purpose was to review the date of the application
7 and the diagnosis on the death certificate or the
8 reason of death or --
9 Q And what did you find when you reviewed the death
10 certificate?
11 A What I noted was that it appeared to indicate
12 metastatic melanoma, and it appeared to indicate two
13 to three years.
14 Q Do you know what the two to three years meant on the
15 death certificate?
16 A I believe it meant that the patient suffered from
17 metastatic melanoma for two to three years.
18 Q In your copy, can you see what's written, typed above
19 the entry two to three years? I can't on mine.
20 A No. No, I cannot.
21 Q Is that the original one that you received?
22 A No. This would be a copy.
23 Q Do you have any reason to think that the original is
24 more legible than this copy?
25 A I would imagine that because this was received by our

1 chronology of all the events?
2 A No, it's my own.
3 Q You do that every time?
4 A I do.
5 Q And this was the first one, however, and you've done
6 it ever since?
7 A That's correct.
8 Q Because you have this chronology of events, I don't
9 have any problem with you referring to it if you need
10 to to help you refresh your memory as to when things
11 happened --
12 A Okay.
13 Q -- and the timing of them because we want to be
14 accurate. I'd like you to go step by step
15 chronologically through with me, and you can refer to
16 your notes, of your involvement in the handling of
17 the claim file.
18 A Okay.
19 Q The very first thing that relates to your
20 involvement, I think you testified earlier that you
21 received a claim file, the first one that you had
22 received. And what did you do?
23 A I received a copy of the claim along with the death
24 certificate.
25 Q What did you do in response to receiving a copy of

1 office via fax -- or maybe I shouldn't say that. It
2 was received by -- no, I believe it was our office
3 from Patriot Federal Credit Union, that possibly the
4 fax machine made the unclear copy.
5 Q Well, as we sit here today, do you either recall or
6 know what the typed information is above the two to
7 three years?
8 A I do not.
9 Q So you don't know what that two to three years
10 represents then?
11 A I do not.
12 Q And you don't know whether Mr. Hall had any
13 information about the metastatic melanoma for a two
14 to three-year period, do you?
15 A Based on the death certificate?
16 Q Based on the death certificate.
17 A That would be correct.
18 Q Did you have any information at that point, upon
19 receiving a copy of the application and the death
20 certificate, that any further investigation needed to
21 be done?
22 A I'm sorry, could you repeat that? I was putting my
23 glasses on.
24 Q I think we've been discussing the death certificate
25 and the application.

1 A Yes.

2 Q Those were the first two documents you received?

3 A Correct.

4 Q And the application for benefits from the credit union?

5

6 A Correct.

7 Q Was there anything on the application for benefits and the death certificate that in your mind warranted any further investigation?

8

9

10 A Yes.

11 Q What was that?

12 A It warranted further investigation with regard to the applicant's past medical history.

13

14 Q Are you referring to the application itself?

15 A I'm referring to the no answer on Question No. 1 from the application.

16

17 Q From Borrower 1?

18 A That is correct.

19 Q You understood Borrower 1 to be Mr. Hall?

20 A Correct.

21 Q What did you -- which part of that application did you believe warranted further investigation? And I know we're on the specific question. There's a long paragraph there about past medical information.

22

23

24

25 A You're asking for a specific within that question?

1 Q Yes.

2 A Specifically had he ever been treated for or diagnosed by a member of the medical profession as having any of the following.

3

4

5 Q And did any of those apply to Mr. Hall at that time in your mind?

6

7 A At the time I received the death certificate?

8 Q Yes.

9 A I didn't know at that time.

10 Q Is it standard protocol upon the receipt of a death certificate and an application for benefits to conduct an investigation without knowing the specific basis for the investigation?

11

12

13

14 A Is it standard protocol?

15 Q At CUNA Mutual.

16 A Our policy is defined as that.

17 Q Is that a written policy?

18 A The actual certificate, yes.

19 Q The conducting of an investigation when you don't have a specific basis to believe that there was any information that was incorrect.

20

21

22 A Oh, no, that would not be a standard protocol.

23 Q But that's the protocol that you applied in this case, is that right?

24

25 A Correct, based on the death certificate.

1 MR. KELLEY: If I could just

2 interject here, I don't think the two of you are communicating.

3

4 THE WITNESS: I don't think we

5 are either.

6

7 MR. KELLEY: I think what he's

8 trying to get at here is do you routinely in every case do a claim investigation when you get a death certificate, or was there something about this one that caused you to do it? Is that what you're looking for, Steve?

9

10

11

12 Q In his words, yes.

13 A We do not routinely investigate. That would be correct. And, yes, there was a specific reason.

14

15 Q That was the metastatic -- dying from metastatic melanoma?

16

17 A Correct.

18 Q At that point did you have any idea of the rate at which someone dies from metastatic melanoma?

19

20 A I believe it can vary.

21 Q Did you have any information as to whether or not Mr. Hall at any point prior to the application knew he had metastatic melanoma?

22

23

24 A At the point at which time that I received the death certificate?

25

1 Q At the point that he made the application. Let me try to clarify.

2

3 A Okay.

4 Q An insured, his duty is to be truthful and accurate to the best of his ability at the time he makes the application, isn't that right?

5

6

7 A That is correct.

8 Q To provide the information as requested that he knows about?

9

10 A Correct.

11 Q And he has no duty to provide things that he doesn't know about?

12

13 A Correct.

14 Q He has no duty to supplement later about things that he learns about but didn't know about at the time of the application?

15

16

17 MR. KELLEY: Objection, calls for a legal conclusion.

18

19 Q I'm not asking for the legal conclusion. I'm asking within CUNA Mutual, your insureds, do they have a duty to call you later on and tell you, oh, I found some additional information that I didn't know before and now it's a year later, but I'm supplementing my application?

20

21

22

23

24

25 MR. KELLEY: Object to the form.

1 You can answer if you understand it.

2 A You're saying after they've been approved for

3 coverage?

4 Q Right.

5 A No, they would not have to.

6 Q So Mr. Hall's duty with respect to CUNA Mutual and

7 this application form was to be truthful and accurate

8 from the information he had available then?

9 A Correct.

10 Q What is there about his application and the death

11 certificate that you believed prompted you to

12 investigate him?

13 A The cause of death being metastatic melanoma was of

14 concern less than one year after the application

15 date.

16 Q Did you have any information that at the time that

17 Mr. Hall filled out the application that he knew he

18 had cancer?

19 A At the point that we received the death certificate?

20 Q Right.

21 A No.

22 Q Did you ever get information that Mr. Hall knew in

23 November of '98 that he had cancer?

24 A I felt that we did, yes.

25 Q We'll go through it because I'd like you to go

1 Q And the question mark, what significance would there

2 be to have a question mark concerning melanoma in

3 your mind as a claims examiner?

4 A The question mark in my mind could apply to different

5 parts of that statement. It could mean question mark

6 melanoma, it could mean question mark back, it could

7 mean question mark on the date.

8 Q You didn't know at that time, the time you were

9 reviewing this, what that question mark related to?

10 A Correct.

11 Q We deposed earlier Dr. Ansfield, and he said there

12 were only two possibilities. Either the patient gave

13 the doctor that information or the doctor was writing

14 down his own notes to question whether that mole was

15 a melanoma.

16 MR. KELLEY: Objection --

17 Q Would you agree with that?

18 MR. KELLEY: Object to the form

19 of the question. You can answer.

20 A I'm going to have to have you repeat that, I'm sorry.

21 Q Aren't there two possibilities? Either the patient

22 told the doctor that he wondered or had a question

23 whether he had a melanoma in '93 or the doctor

24 himself was questioning whether the patient had a

25 melanoma in '93?

1 through the record now and show me the information

2 that you had that led you to believe that Mr. Hall

3 knew he had cancer at the time the application was

4 filled out.

5 A Okay. So you just want me to indicate the dates and

6 what was --

7 Q We'll go through them one at a time.

8 A Dr. Ernest Charlesworth's medical records.

9 Q What did Dr. Charlesworth's medical records indicate

10 that made you believe that Mr. Hall knew he had

11 cancer at the time the application was filled out?

12 A Date of service --

13 MR. KELLEY: First of all, object

14 to the form of the question. You can answer.

15 THE WITNESS: I can answer?

16 MR. KELLEY: Um-hum.

17 A Okay. Date of service, April 30th, 1998 where the

18 medical record indicates, "Past medical history, ?

19 melanoma removed, back, 1996."

20 Q Do you know who wrote that?

21 A I do not know personally who wrote that.

22 Q In your experience, was it the doctor who wrote that

23 or the patient?

24 A With my experience, the doctor would write the

25 medical record.

1 A Since this was the first visit with this particular

2 physician, I would in my review process assume that

3 the patient indicated that information to this

4 doctor.

5 Q And the patient indicating the information, isn't it

6 just as likely the patient is indicating I may have

7 had a melanoma, I don't know, in '93?

8 MR. KELLEY: I'm going to object

9 to this line of questioning. I mean her

10 speculating about -- calls for speculation,

11 objection.

12 Q We have something more definitive, don't we? We have

13 the '93 pathology report?

14 A Along with other documents, yes.

15 Q And you reviewed that '93 report in part of your

16 evaluation process?

17 A Again along with all the other documents, yes.

18 Q The '93 pathology report indicated what the mole was

19 that was removed, didn't it?

20 A As stated in that document, yes.

21 Q And what did the '93 pathology report tell us with

22 respect to the mole that was removed in '93?

23 A In 1993?

24 Q Yes.

25 A It indicates, "Dysplastic nevus skin, back," and it

1 also indicates follow-up is recommended in review of
 2 the dysplastic changes noted.
 3 Q Is there anything on that pathology report anywhere
 4 that indicates cancer?
 5 A On this pathology report, no.
 6 Q That mole that was removed, isn't that the reference
 7 that's being made to question melanoma?
 8 A That I did not know because this date indicates 1996.
 9 Q Do you have any reason to believe that '96 date was
 10 wrong on the medical record?
 11 A At the time that the file was reviewed, no.
 12 Q Well, you obtained medical records from all of the
 13 treating doctors that at least had records, didn't
 14 you?
 15 A Yes, I did.
 16 Q And did any of those treating doctors ever refer
 17 to --
 18 MR. KELLEY: I'm going to
 19 object. Wait a minute, I'm going to object to
 20 that.
 21 MR. PEDERSEN: Let me ask the
 22 question first.
 23 MR. KELLEY: No, I was going to
 24 object to the one before that, sorry. I think
 25 your question was you obtained from all the

1 treating physicians who had records, is that
 2 what you said?
 3 MR. PEDERSEN: I can't remember.
 4 I'm already on the next question.
 5 MR. KELLEY: If that was your
 6 question, I object to it. Just note it for the
 7 record.
 8 MR. PEDERSEN: Okay.
 9 Q There's no place in any of the medical records that
 10 evidence besides this statement, question melanoma
 11 '96, that referenced any moles being removed or any
 12 procedure done in '96, is there?
 13 A Actually I believe there is. Dr. William Sharfman's
 14 records of July 15th, 1999.
 15 Q He took some information from the same note, didn't
 16 he?
 17 A That I do not know.
 18 Q Do you have any reason to believe that a mole or any
 19 melanoma was identified or removed in '96?
 20 A I do not --
 21 MR. KELLEY: Object to the form
 22 of the question. Asked and answered. You can
 23 answer it again.
 24 A I do not know.
 25 Q The basis for your denial of the claim was the '93

1 mole, wasn't it?
 2 A Are you saying is that the only consideration, no.
 3 Q That's the consideration that you put on the letter
 4 to Mrs. Hall, isn't it, the '93 mole?
 5 A That is what I put on the letter to Mrs. Hall.
 6 Q Did you not tell Mrs. Hall everything?
 7 A That was the main reason, but the 1996 scenario was
 8 of concern.
 9 Q Did you ever ask a doctor for the pathology report of
 10 a '96 mole that was removed?
 11 A No.
 12 Q You don't know as you sit here today whether there
 13 was a mole in '96 or not, do you?
 14 A I do not.
 15 MR. KELLEY: Object and just note
 16 for the record that she asked for all the
 17 records, not specifically the pathology report
 18 from 1996.
 19 Q And none of them contain a pathology report from '96
 20 or a hospitalization from '96 for a mole removed in
 21 '96, do they?
 22 A Of the records I obtained, no. Wait, what was the
 23 last part of that question? Did you say a mole
 24 removed in 1996?
 25 Q Right.

1 A Yes, I did. Dr. Sharfman's indicates that he had
 2 small moles removed from -- on his left neck in 1996.
 3 Q We've been discussing the April 30th, '98 doctor
 4 visit. What was the next item in the medical records
 5 that led you to believe that Mr. Hall knew in
 6 November of '98 that he had cancer?
 7 MR. KELLEY: Steve, I'm going to
 8 object to you doing it sort of in a piecemeal
 9 basis. You know, they performed an
 10 investigation over a period of time that
 11 encountered a number of different pieces of
 12 paper, and a decision was made after
 13 encountering all those pieces of paper.
 14 Now you're asking her to go through and to
 15 identify each single item that caused her to
 16 reach a conclusion, and I don't think that's the
 17 way the process works. So I don't think that's
 18 a fair set of questions. Objection on that
 19 basis.
 20 Q I don't know any other way to do this but
 21 chronologically through the records that you have in
 22 front of you that are highlighted. Did you do that
 23 highlighting, by the way, of the records in front of
 24 you?
 25 A Yes, in preparation for the deposition, I did.

1 Q You didn't do it before the deposition -- before --
 2 or during the claim process?
 3 A That would be correct, I did not.
 4 Q Well, what's the next piece of information that you
 5 had that combined with other information led you to
 6 believe that Mr. Hall knew he had cancer when he put
 7 no on the mortgage application?
 8 A The next piece of mail or the next medical record
 9 that was also received from Dr. Charlesworth's office
 10 was date of service, January 22nd, 1999 from
 11 Dr. J. M. Chicklo, C-H-I-C-K-L-O. And in that record
 12 it indicates personal history, surgery -- spinal
 13 surgery, and he had a malignant mole excised in 1993
 14 on his back as well as under history of present
 15 illness, he has a history of having a melanoma on his
 16 back a number of years ago.
 17 Q What's the date of that record?
 18 A I believe I said January 22nd, 1999.
 19 Q And a record of January 22nd, '99 led you to believe
 20 that Mr. Hall knew in November of '98 that he had
 21 cancer?
 22 A Based on the personal history in that record, yes.
 23 Q And you don't know how long or when Mr. Hall found
 24 out he had cancer in a mole that was removed in '93,
 25 do you?

1 MR. KELLEY: Object to the form.
 2 Q We have a date in time where Mr. Hall gives a
 3 history, at least according to your interpretation of
 4 the records, and the date that the information is
 5 given is January 22nd, '99. We don't know how far
 6 back in time Mr. Hall knew of his history, do we?
 7 A Well, in the personal history it says he had a
 8 malignant mole excised in 1993 on his back.
 9 Q We don't know if Mr. Hall knew that, do we?
 10 A From this record I don't know that.
 11 Q Okay. Let's go to the next record then.
 12 A I reviewed the January 22nd pathology report on the
 13 left surgical node. The diagnosis reads, "Lymph node
 14 left neck, metastatic carcinoma, suspect melanoma."
 15 Q That's from the surgery on his neck that's being done
 16 in January. That doesn't relate to the '93 mole,
 17 does it?
 18 A Well, it says suspect melanoma, and based on the
 19 information from Dr. Chicklo with regard to the
 20 patient's past medical history of a 1993 melanoma, it
 21 was considered.
 22 Q This report only says suspect melanoma, right?
 23 A That is correct.
 24 Q And if you're relating that to the '93 mole, you
 25 didn't have information that Mr. Hall knew he had

1 cancer in November of '98 on that report, do you?
 2 A Just that they were suspecting that it was from a
 3 melanoma.
 4 Q When a patient suspects something, is he to indicate
 5 that on a mortgage application form about whether or
 6 not he has cancer?
 7 A If he were told that, yes.
 8 Q And if he weren't told, he wouldn't?
 9 A Correct.
 10 Q Even if he had some concerns himself?
 11 A Correct, if he were not told.
 12 Q Because the box is only yes or no, there's no box for
 13 suspect or concern?
 14 A And the question -- that's correct. The question
 15 reads have you been told or treated.
 16 Q Do you know as you sit here today whether or not
 17 Dr. Hurley has been deposed?
 18 A I do not.
 19 Q Let me provide that information to you then.
 20 Dr. Hurley, the doctor who removed the '93 mole, has
 21 been deposed. And are you surprised to find out that
 22 in his deposition he specifically stated that he did
 23 not tell Mr. Hall that he had a cancer or a malignant
 24 mole and that Mr. Hall did not have one?
 25 MR. KELLEY: Objection.

1 Q Does that surprise you --
 2 MR. KELLEY: Object to the form
 3 of the question. You know, I mean it's -- I
 4 mean it's the form of the question, but the
 5 question's objectionable. It's immaterial to
 6 her investigation. You can answer it. It's of
 7 no moment either way.
 8 MR. PEDERSEN: Well, I take some
 9 significance to counsel's contention that it's
 10 of no moment. We believe that it's related to
 11 the conduct of the insurance company's ongoing
 12 conduct, particularly in light of the
 13 information that's continually provided in this
 14 case, including Dr. Hurley's deposition.
 15 MR. KELLEY: Dr. Hurley's
 16 deposition was not provided to this underwriter
 17 when she was performing her evaluation of this
 18 claim, and none of what we're here to talk about
 19 today has to do with Dr. Hurley or the
 20 continuing investigation which is -- which has
 21 nothing to do with this particular underwriter.
 22 MR. PEDERSEN: Then I reserve
 23 the right to redepose all of these individuals
 24 after the complaint is amended that includes the
 25 ongoing providing of material and failure to pay

1 benefits.

2 MR. KELLEY: You can reserve all

3 you want to, and we'll deal with it at the time.

4 MR. PEDERSEN: Okay.

5 Q What was the next information that you had that was

6 included in your consideration or thought that

7 Mr. Hall had in essence lied on his insurance

8 application form?

9 MR. KELLEY: Object to the form.

10 Q Isn't that what you're saying, that he lied on his

11 application?

12 A That Question No. 1 may or should have been answered

13 in a different way. Lied, I wouldn't use the term

14 lied.

15 Q Well, did you refer it to your fraud investigation

16 section for a criminal referral for fraud?

17 MR. KELLEY: Object to the form.

18 You can answer.

19 A I referred it to our special investigation unit, but

20 I did not know whether or not or where it would go

21 from there.

22 Q What's the next information that you had that you

23 believed supported the conclusion that Mr. Hall knew

24 in '98 that he had melanoma or cancer?

25 A The February 17th letter to Dr. Chicklo from

1 Dr. Michael Cashdollar.

2 Q What is there in that letter that led you to believe

3 Mr. Hall knew in '98 that he had a tumor that was

4 cancerous?

5 A The information which indicates, "Personal or past

6 medical history is most notable for the malignant

7 melanoma. Surgical resection in 1993. The patient

8 also reports two lumbar spinal procedures in 1989 and

9 1993 for herniated disk disease."

10 Q What is there about that entry that leads you to

11 believe Mr. Hall knew in '98 that he had cancer?

12 A That this information provided by the patient or that

13 this information was provided by the patient that he

14 had a malignant melanoma, surgical resection in 1993

15 and also reported two lumbar spinal procedures.

16 Q Now, this is in February, February 17th of 1999. You

17 don't know when Mr. Hall acquired that information

18 that his '93 tumor was malignant, do you?

19 A Actually there's another portion of this letter that

20 is taken into consideration with this information.

21 Q I'm asking the question --

22 A About that particular line?

23 Q But you can refer to other parts of the letter that

24 relate to that line.

25 A Okay.

1 Q I just don't want to skip to other issues. What

2 information led you to believe that -- from this

3 letter led you to believe Mr. Hall knew in '98 that

4 in '93 he had had a malignant mole removed?

5 A The portion that indicates surgical resection in 1993

6 and the portion that indicates personal or past

7 medical history is most notable for malignant

8 melanoma. And it appears to be provided by the

9 patient.

10 Q But that letter does not indicate when the patient

11 found out that information, does it?

12 A It says, "Surgical resection most notable for

13 malignant melanoma in 1993." It doesn't say when he

14 found out.

15 Q He could have found out in '99, in January?

16 MR. KELLEY: Objection, calls for

17 speculation.

18 Q It does call for speculation, doesn't it, to figure

19 out when Mr. Hall knew in your mind?

20 MR. KELLEY: Well, first of all,

21 my objection is to your question.

22 MR. PEDERSEN: Right.

23 Now I'm asking a new question.

24 MR. KELLEY: Very fine.

25 Q It does call for speculation, doesn't it, to know

1 when Mr. Hall knew that he had a malignant tumor?

2 A I wouldn't say speculation. We reviewed all the

3 documents of the medical history that we received.

4 Q Including the '93 pathology report that said no

5 cancer?

6 A Along with all the other documents, yes.

7 Q And to know when Mr. Hall became aware from '93

8 through 2000 of when -- that he had cancer, that

9 would require speculation on your part, wouldn't it?

10 A I guess I wouldn't say speculation.

11 Q From the February 17th, '99 letter, you don't know

12 when Mr. Hall knew he had cancer, do you?

13 A Well, in a medical record, April 30th of 1998,

14 there's a mention of a melanoma.

15 Q There's a question mark with melanoma, isn't that

16 right?

17 A There's a question mark before the sentence, correct.

18 Q And that's the only indication prior to '98, prior to

19 the application, contemporaneous with the events that

20 there was any suspicion of melanoma?

21 A Not based on the medical records that we received.

22 Q What contemporaneous records did you receive

23 contemporaneous with Mr. Hall's knowledge that said

24 that he had knowledge of cancer at the time the

25 application was filled out in November of '98?

1 MR. KELLEY: Objection. I have
2 no idea what you're talking about. If she does,
3 she can answer.

4 THE WITNESS: I don't either.

5 Q Well, when a surgeon does a surgery, he makes a
6 contemporaneous event of the surgery?

7 A Can you define contemporaneous for me?

8 Q At or near the time of the event. A surgeon who
9 does a surgery makes dictations in notes at or near
10 the time of the event, doesn't he?

11 A Hopefully.

12 Q A pathologist who reviews slides makes observations
13 at or near the time of the event, doesn't he?

14 A I believe so.

15 Q A doctor who's seeing a patient and has the patient
16 sitting across from him can make findings right there
17 and record them in his medical records?

18 A He can.

19 Q Would you agree with me that those are
20 contemporaneous findings or events?

21 A Yes.

22 Q A doctor can refer to something in the past, like a
23 past history that would not be contemporaneous with
24 the event, isn't that right?

25 A That is right.

1 Q And all of the notes that you're referring to since
2 April of '98 that refer to the mole in '93, they're
3 not making any contemporaneous observation or comment
4 of that mole, are they?

5 A They're making comment in some of the notes from a
6 patient history provided to them, it appears.

7 Q And those notes are not contemporaneous with the
8 removal of the mole, are they?

9 A I don't really understand contemporaneous. Maybe you
10 could use another word.

11 Q At or about the same time. The notes that are being
12 made by doctors in '99 are not being made at or about
13 the same time as the mole that was removed and
14 observed, are they?

15 A In 1993 or 1996?

16 Q In either '93 or '96. A doctor in '99 is not making
17 notes at or about the same time as those removals --

18 A Correct.

19 Q -- is he? He's compiling information from the
20 patient and from records?

21 A Correct.

22 Q And because those are not recordings that are
23 happening at the time of the event, we don't know
24 when Mr. Hall knew that he had cancer, do we?

25 A Well, based on the patient medical history, I would

1 say he did know.

2 Q What about based on the pathology report, could he
3 have known if the pathologist told him it was not
4 cancer, told his doctor it wasn't cancer by the
5 pathology report? Could Mr. Hall have known more
6 than his doctor and more than his pathologist?

7 MR. KELLEY: Objection,
8 argumentative.

9 Q Could Mr. Hall have been expected to know more than
10 the pathologist knew microscopically about what was
11 happening to him?

12 A At the point in time that we received these records,
13 I did not know if there were other physicians
14 possibly that had treated him and told him he had a
15 malignant melanoma.

16 Q And it would require speculation on your part to
17 guess whether other physicians treated him that
18 didn't provide records and what those records said,
19 wouldn't it?

20 A It would.

21 Q And you weren't denying a claim based on speculation?

22 A No, we were denying a claim based on information
23 provided to us in these records that we obtained.

24 Q You never did obtain Dr. Hurley's records, did you?

25 A Actually I believe we received two records from

1 Dr. Hurley, but not from his office, from another
2 physician's office.

3 Q Weren't they Chambersburg Hospital records concerning
4 the surgery in '93?

5 A Let me check. There is a notation that they are from
6 Chambersburg Hospital.

7 Q Those are outpatient emergency care records relating
8 to the removal of the mole, aren't they?

9 A They are.

10 Q And those were contemporaneous records, surgical
11 records of the time of the removal of the mole, isn't
12 that right?

13 A Again I would -- contemporaneous is not --

14 Q In your vernacular?

15 A No.

16 Q Then let me talk about records at or about the time
17 of the events. The handwritten outpatient emergency
18 care unit records from Chambersburg Hospital, those
19 were dated and taken about the time of the mole
20 removal, aren't they?

21 A Of the 1993 mole removal?

22 Q Yes. And those, nowhere in those records does it
23 indicate anywhere cancer or malignancy, does it?

24 A No.

25 Q And you did not have Dr. Hurley's office notes or any

1 of his records directly from his office?

2 A That is correct.

3 Q Did you understand that Dr. Ansfield had told you to

4 obtain Dr. Hurley's records specifically?

5 A I attempted to obtain Dr. Hurley's records

6 specifically.

7 Q Dr. Ansfield told you that, didn't he, by a note?

8 A Not specifically, no. Not Dr. Hurley specifically,

9 no.

10 Q He didn't mention by name, but he said we better get

11 the surgeon's records from '93?

12 A No, he asked for the referring physicians and all

13 medical records from 1993 to present, which would

14 include the surgeon.

15 Q You don't know whether Dr. Ansfield attached

16 particular significance to the surgeons' records, the

17 surgeons who removed the mole in either notes or

18 comments to you?

19 A No notes to me. I don't recall in a conversation.

20 It could have been brought up, yes.

21 Q In part of your claim process, did you consider it

22 important to get the notes and office notes from the

23 surgeon who removed the '93 mole?

24 A I did consider it important.

25 Q And you wrote a letter to that doctor attempting to

1 get the records?

2 A Yes, I did.

3 Q What did the doctor tell you or his staff?

4 A The physician office contacted our office on

5 January 31st, 2000 indicating that his file could not

6 be found, that they had misplaced or lost his

7 records.

8 Q At that point did you attempt to speak with the

9 doctor to find out what he recalled of the events?

10 A I did not.

11 Q Why didn't you?

12 A I contacted the physician office and spoke with the

13 medical records person.

14 Q Did you have an authorization at the time to get

15 records or obtain information about Mr. Hall?

16 A Yes.

17 Q That authorization was obtained at the time of the

18 application, wasn't it?

19 A Yes, it was.

20 Q It was good for 30 months?

21 A Correct.

22 Q It would have included this period of investigative

23 time?

24 A Correct.

25 Q Do you believe you had authority to speak with the

1 doctor about Mr. Hall's care?

2 A Sure.

3 Q Why didn't you when you couldn't get his records?

4 A We were requesting the actual medical records, not a

5 phone conversation or -- I doubt he would recollect a

6 particular patient.

7 Q At the time you were evaluating the claim, you could

8 have spoken with Dr. Hurley, but you didn't think he

9 would remember?

10 A I did not think he would remember a specific patient

11 or pathology report, correct.

12 Q So it comes as a surprise to you that he had his

13 deposition taken and recalled about this procedure?

14 MR. KELLEY: Well, objection.

15 Recalled all about the procedure after he met

16 with his lawyers, after he reviewed the records

17 that he told us he didn't have, does that

18 surprise you? You can answer the question.

19 A I am not aware of the deposition that Mr. Hurley gave

20 or any of the information contained in it.

21 Q But the reason you didn't talk to him is because you

22 didn't think he would recall the events?

23 A Of a particular patient and pathology report, that's

24 correct.

25 Q Did you call either of the pathologists to -- who did

1 the pathology report in '93 to get their take on

2 this, whether there was cancer or not or something

3 that was missed?

4 A No, I did not make phone contact with a pathologist

5 with regard to a specific patient's pathology report.

6 Q You had authority to do that, though, didn't you?

7 A I had authority to contact medical providers. I'm

8 not sure that a pathologist would be within that

9 realm that I --

10 Q Well, you already had the pathology record, didn't

11 you?

12 A I did not at this time, no.

13 Q I'm sorry, during your review, and I need to make

14 clear about this, during the review that we're

15 talking about and you're going through and

16 highlighting different dates, you had the '93

17 pathology report, didn't you?

18 A I did not receive the '93 pathology report until I

19 received Dr. Cashdollar and Enders' medical records.

20 Q When was that?

21 A I'm just going to refer to my chronological.

22 February 2nd, the day after I spoke with Dr. Hurley's

23 office.

24 Q Then you received the pathology report from '93?

25 A Correct.

1 Q And you had that pathology report before you made
2 your decision with respect to coverage and rescission
3 of an insurance policy?
4 A That was contained in the claim file, correct.
5 Q And it was a document you reviewed?
6 A Along with all other documents, yes.
7 Q We were referring to Dr. Hurley's -- the calls to his
8 office to attempt to obtain his records. Did you get
9 information at that time that his records had been
10 sent to an attorney?
11 A I did.
12 Q Did you attempt to find out who that attorney was so
13 you could get copies of those records?
14 A I did not.
15 Q Why?
16 A I don't recall.
17 Q You obtained information about the attorney on two
18 occasions, isn't that right, January 31st and again
19 on February 1st?
20 A Of what year?
21 Q 2000.
22 A Did I obtain information about an attorney?
23 Q Yes. And I'm referring to your message notes in your
24 file. There's one note dated January 31st, and at
25 the bottom of that it says attorney involved. And

1 Q But you don't know because you never obtained them,
2 right?
3 A Correct.
4 Q Have you subsequently reviewed Dr. Hurley's records
5 in preparation for your deposition today?
6 A Not his records, no.
7 Q So you don't know whether they indicate a cancer or
8 no cancer in the removal of the '93 mole?
9 A Whether his records do?
10 Q Right.
11 A No.
12 Q So at no point in the entire claims process did you
13 ever get Dr. Hurley's office records?
14 A His office records, no.
15 MR. KELLEY: What do you mean by
16 the entire claims process? Can you put a date
17 on that?
18 MR. PEDERSEN: No.
19 MR. KELLEY: Well, I'm going to
20 object to the question then on that basis.
21 MR. PEDERSEN: Sure.
22 Q What was the next document --
23 MR. KELLEY: Just, I'm sorry,
24 Steve, I just want to make sure that you're not
25 referring to the entire claims process as

1 another note, February 1st, where it says four pages
2 attorney in Harrisburg.
3 A No, this was my writing on the note of January 31st.
4 It was written on February 1st. After my contact on
5 February 1st I wrote attorney involved.
6 Q Why didn't you get the name of the attorney and get
7 the records?
8 A I didn't feel it was relevant.
9 Q Dr. Hurley's records from the surgical procedure
10 removing the mole weren't relevant?
11 A The attorney information. I thought that's what you
12 were asking, I'm sorry. Maybe you could repeat the
13 question.
14 Q Well, it's all the question about obtaining
15 Dr. Hurley's records. When you found out Dr. Hurley
16 said he didn't have them, you found out that he had
17 sent them, he sent four pages to an attorney in
18 Harrisburg, but you didn't find out where that
19 attorney's office was so you could try to get the
20 records?
21 A Well, we did receive the pathology report and one
22 other page from Chambersburg Hospital the next day.
23 Q Those weren't Dr. Hurley's office records, though,
24 right?
25 A They may have been contained in his office records.

1 continuing up to today.
2 MR. PEDERSEN: Well, we
3 understand. We understand I've provided to you
4 Dr. Hurley's office notes --
5 MR. KELLEY: Right.
6 MR. PEDERSEN: -- a couple of
7 weeks ago.
8 MR. KELLEY: Right.
9 Q So up until a couple of weeks ago, you have no
10 information or knowledge about ever getting
11 Dr. Hurley's records, but I'll tell you that I
12 provided them to counsel a couple weeks ago.
13 MR. KELLEY: And I just want you
14 to understand to the extent that there's any
15 continuing evaluation of this claim going on,
16 that's not being done by Ms. Larson. So I don't
17 want -- I just don't want the record to be
18 confused that when she's saying, you know, I've
19 never seen that in the continuing claims
20 investigation, that she's referring to her piece
21 of this puzzle here.
22 MR. PEDERSEN: Okay.
23 MR. KELLEY: All right.
24 Q What's the next document that in your mind led you to
25 believe that Mr. Hall knew that he had cancer at the

1 time he filled out the application in November of
 2 '98?
 3 MR. KELLEY: Object to the form.
 4 You can answer.
 5 A I don't believe we finished on the letter of
 6 February 17th, 1999 to Dr. Chicklo from
 7 Dr. Cashdollar, and if I'm repeating, I apologize.
 8 The note that indicates, "As you are well aware,
 9 Mr. Hall demonstrated a left in-scapular dermal
 10 lesion in 1993. Pathology revealed a malignant
 11 melanoma. Lesion was surgically excised and
 12 appeared" -- I'm sorry, "excised with apparent clear
 13 surgical margins. In early 1988 the patient
 14 displayed a nontender left cervical lymph node with
 15 apparent increase in size," which I assume should
 16 have been December 1998.
 17 Q The information that you just read, that doesn't
 18 indicate that's a patient history, does it?
 19 A It's talking about the patient's history with another
 20 doctor.
 21 Q And you believe that Mr. Hall reported that he had a
 22 scapular dermal lesion in '93?
 23 A I believe that he reported to this physician that he
 24 had had a surgical resection in 1993 and the past
 25 medical history was most notable for malignant

1 a cancer when he filled out his homeowner's
 2 application policy?
 3 A If it is under patient medical -- past medical
 4 history or patient states, yes.
 5 Q Well, the letter that you just read from doesn't say
 6 anywhere patient history or patient states, does it?
 7 A It says --
 8 Q It's a letter? I'm sorry.
 9 A It says past medical history. I assume the doctor
 10 got the past medical history from the patient. You
 11 asked me what we based our decision on.
 12 Q And let me then go back and try to clarify. Your
 13 decision was based on references from January through
 14 July of '99 to a past malignant mole?
 15 A April of 1998.
 16 Q Let me do a kind of listing and see if I get this
 17 right.
 18 A Okay.
 19 Q From January -- January 22nd, '99 through July of
 20 '99, references in the medical record to a malignant
 21 mole that was removed in '93 for the first part, that
 22 was one consideration?
 23 A In '93, yes.
 24 Q Well, those letters in '99 refer to the '93 mole,
 25 malignant mole?

1 melanoma.
 2 Q You think those are Mr. Hall's words, not the
 3 doctor's words?
 4 A With regard to the past medical history?
 5 Q With regard to what you just read.
 6 A The upper paragraph or the past medical history?
 7 Q The entire section that you just read that included
 8 the dermal lesion, the lymph node, the surgical
 9 margins, the lesion, you believe those are Mr. Hall's
 10 recitation of his history?
 11 A I would say that the only part that is Mr. Hall's is
 12 that the patient had had a surgical resection in 1993
 13 of a malignant melanoma.
 14 Q What makes you believe that's Mr. Hall's and not the
 15 doctor reporting what he believes after reviewing the
 16 pathology report or resections, slides of the mole?
 17 A The past medical history is normally provided by the
 18 patient.
 19 Q There are a number of documents from February 17th
 20 through July of '99 that make reference to malignant
 21 mole, isn't that correct?
 22 A That's correct.
 23 Q And you believe that each time a reference to a
 24 malignant mole is made that that's an indication in
 25 your mind that Mr. Hall knew he had a malignant mole,

1 A There's also one that indicates 1996, but yes.
 2 Q And an April '98 doctor visit where there's a
 3 question mark and then melanoma?
 4 A Where there's a question mark before the sentence,
 5 yes.
 6 Q Question mark, melanoma and then a date of 1996?
 7 A Back, 1996.
 8 Q And a pathology report done at the time of the
 9 removal of the mole that showed no cancer?
 10 A In combination with all of the other documents, yes.
 11 Q Right. I'm kind of listing them --
 12 A Yep.
 13 Q -- trying to summarize then, see if I have this
 14 right. And Dr. Hurley's surgical records from
 15 Chambersburg in '93, they show no cancer?
 16 A I believe you just said that.
 17 Q Well, you referred to them. You had it open, right?
 18 There was no mention of cancer or malignancy?
 19 A I thought -- I'm just saying I thought I just
 20 answered that, that's correct.
 21 Q And a statement from your own insured before he died
 22 that he didn't know that he had cancer, that no one
 23 told him he had cancer?
 24 A I know of no statement before he died.
 25 Q Well, isn't that what that application is, he checked

1 the box no and signed it and signed it knowing that
 2 he could be investigated and under penalties of fraud
 3 signing a statement that no one ever told him he had
 4 cancer; isn't that what he's done?
 5 A He did. He also didn't indicate a back surgery
 6 either and signed that document.
 7 Q So you have an affirmative statement signed by and
 8 dated by an insured that he's never been told that he
 9 had cancer, is that right?
 10 A He's been told that he doesn't have any of those,
 11 yes, that's correct, any of those conditions.
 12 Q And you weighed that also?
 13 A Weighed what also?
 14 Q You weighed the affirmative statement of the insured
 15 along with the other things that I've told you, and
 16 you concluded that you were not going to honor the
 17 policy?
 18 A We weighed all of the documents that we had in our
 19 possession, correct.
 20 Q And I've just highlighted them, is that right?
 21 A Not all of them, but, yes, some of them.
 22 Q By categories I've highlighted them, haven't I?
 23 A Again you've highlighted some of them, not all of
 24 them, yes.
 25 Q How were you trained to weigh a pathology report and

1 malignant melanoma prior to application.
 2 Q Why not, where she's going to lose her home as a
 3 result of your decision, why not call her?
 4 MR. KELLEY: Objection,
 5 objection. Come on, Steve.
 6 Q Why not call her?
 7 A Because --
 8 Q Do you think she's too traumatically involved in her
 9 husband's death?
 10 A I don't know that she knows all of his medical
 11 history.
 12 Q You wouldn't know until you called, would you?
 13 A I wouldn't know if she knew all of his medical
 14 history even if I did call.
 15 Q And so instead of calling her, you processed the
 16 claim based on the records that you had?
 17 A Not instead of calling her. We reviewed the records
 18 that we had.
 19 Q Mrs. Hall was also an insured, wasn't she? Wasn't
 20 she one of the individuals, she was Borrower 2?
 21 A I don't believe she was. He elected single life
 22 coverage only.
 23 Q You were insuring his life, but she was one of the
 24 beneficiaries under the policy, wasn't she?
 25 A No, the beneficiary is the credit union.

1 an operative note and statements from an insured
 2 against entries in a medical record after the
 3 application is made? Who taught you how to weigh
 4 those and conclude not to uphold the insured?
 5 A I don't know that any one person taught me to do
 6 that. Certainly we regard medical history and
 7 medical records as an important part of a claim
 8 investigation.
 9 Q Unless you don't obtain them?
 10 A I believe we had -- I'm sorry. That would be --
 11 MR. KELLEY: Objection,
 12 argumentative. Let's move on.
 13 Q What part of your training or your experience at CUNA
 14 Mutual taught you how to balance those factors in
 15 deciding whether to deny benefits under a homeowner's
 16 policy?
 17 A I guess my experience is not just from CUNA Mutual.
 18 Q Did you ever pick up the phone and call Mrs. Hall and
 19 ask her about her husband's knowledge of the tumor or
 20 cancer?
 21 A I did not pick up the phone, no. I did write her a
 22 letter in which I indicated she could contact me.
 23 Q Why didn't you call her?
 24 A I wouldn't call an insured's spouse after he was
 25 deceased to ask about whether or not he knew he had a

1 Q Well, she was Borrower 2 listed on the application
 2 and was required to provide medical and health
 3 information to you, wasn't she?
 4 A She was not. She crossed off her portion of the
 5 application and he applied for single coverage, not
 6 joint coverage, and was issued such.
 7 Q Did you have an understanding that Mrs. Hall was a
 8 co-homeowner?
 9 A No.
 10 Q Did you have any understanding as to the relationship
 11 between Mr. and Mrs. Hall?
 12 MR. KELLEY: Object to the form.
 13 Q Did you know they were married?
 14 A I don't know that they were married, no.
 15 Q Did you have any reason to doubt they were married
 16 when they were Mr. and Mrs. Hall signing on the form?
 17 A They could be divorced with the same last name, I
 18 don't know.
 19 Q And filling out a joint mortgage application?
 20 A A single mortgage application.
 21 Q That bore her signature with the date?
 22 A Is that a question or --
 23 Q Did it bear her signature with a date?
 24 A It did bear her signature with a date.
 25 Q Did you have authorization to give all of her medical

1 records and private information with that signature?

2 A There would be no reason to get all of her medical

3 records because she didn't apply for the coverage.

4 He applied for it alone.

5 Q You had authorization to get it, though, by her

6 signature?

7 A I had authorization, but I certainly wouldn't. She

8 didn't apply for any coverage.

9 Q Who at CUNA Mutual is most knowledgeable with respect

10 to the amount of premiums collected versus the amount

11 of benefits paid? Is that you or not you?

12 A It would not be me.

13 Q Who would that be at CUNA Mutual?

14 A I have no idea.

15 Q Who is the president of CUNA Mutual?

16 MR. KELLEY: Steve, before we

17 continue, we've been going for a little while.

18 Let's take a little break.

19 MR. PEDERSEN: Okay. Sure.

20 (Short recess is taken)

21 Q I have a number of questions in general categories

22 relating to CUNA Mutual, and if you don't know the

23 answers, I'll ask you to indicate who might be the

24 best person or what category of person would be the

25 best one to answer that question.

1 A Okay.

2 Q And the first one was, and I think I asked this

3 already, the amount of premiums collected versus the

4 amount paid out, and you said you would not know

5 that. And I believe you said you wouldn't know who

6 the best person to ask is. And then my question was

7 then do you know who is the president of CUNA Mutual

8 or someone in charge of finance at CUNA Mutual?

9 A Mike Kitchen is the president.

10 Q What's his name, Mike?

11 A Kitchen.

12 Q Like the kitchen in your house?

13 A Correct.

14 Q Is there anyone else that comes to mind that would be

15 knowledgeable about that?

16 A I don't know any personal names of people, no.

17 Q Categories, the division manager or something?

18 A No.

19 Q I don't know the titles that are used at CUNA

20 Mutual.

21 A I don't know specific titles. I would imagine

22 someone in the financial area, I don't know,

23 premiums.

24 Q Is there a division within CUNA Mutual relating

25 specifically to finance?

1 A I don't know all the divisions in CUNA Mutual, sorry.

2 Q The amount of premiums collected on home mortgage

3 insurance policies specifically, would that come

4 within your area?

5 A I don't have personal knowledge of it, no.

6 Q Who would, who's in charge of the home mortgage

7 insurance?

8 A Who's in charge of the home mortgage insurance?

9 Q Right.

10 A Or who would know that question or the answer to that

11 question?

12 Q I can break it down into two parts. I'm trying to

13 find the answer to that question.

14 A Deb Haglund is the manager of the home mortgage

15 protection area.

16 Q How do you spell Haglund?

17 A H-A-G-L-U-N-D.

18 MR. KELLEY: Steve, just one

19 point. I mean I don't have any problem with you

20 asking her about who are the people involved and

21 who would have knowledge about these things,

22 but -- and it doesn't sound like this witness is

23 going to have knowledge about, you know --

24 MR. PEDERSEN: You want to

25 designate corporate designees instead, is that

1 what you're suggesting?

2 MR. KELLEY: Well, no. What I'm

3 saying is I don't think this witness is going to

4 know about how much money at any different level

5 at CUNA that they bring in in policies or

6 anything like that.

7 But I think it's objectionable at this

8 point because unless you've got some other basis

9 for asking that question, I think that goes to

10 your punitive damage claim, but we're not to the

11 point where you can get discovery on punitive

12 damages.

13 MR. PEDERSEN: Off the record.

14 (Discussion off the record)

15 Q I would like to go specifically to your letter to

16 Mrs. Hall. Is that a February 10th letter?

17 A Let me see if I can find my copy here.

18 Q It is February 10th, 2000 to Mrs. Hall.

19 THE WITNESS: Do you have your

20 copy?

21 MR. KELLEY: Yep.

22 THE WITNESS: Can I just look at

23 yours?

24 MR. KELLEY: Absolutely.

25 THE WITNESS: Thank you, I

1 appreciate it.

2 MR. KELLEY: You're welcome.

3 A Okay.

4 Q You indicate in that letter that Tommy, and you're
5 referring to Mr. Hall, visited a doctor in '93 and on
6 the application he did not indicate that the visit
7 occurred. Where on the application was Mr. Hall to
8 indicate that the visit occurred to a doctor in '93?

9 A Our question on the application, Question No. 1,
10 indicated -- indicates have you ever been told, and I
11 would have to quote it exactly here.

12 MR. KELLEY: Why don't you do
13 that?

14 THE WITNESS: Okay.

15 A "Have you ever been treated for or diagnosed by a
16 member of the medical profession as having any of the
17 following. Please check the box and circle condition
18 or conditions that apply."

19 And we also on the application have an area for,
20 "Give full details below for any health problem
21 indicated in this section. The name of the person,
22 name and address of physician, nature of condition,
23 dates and duration."

24 Q So I just want to understand what you're telling
25 Mrs. Hall. Are you telling Mrs. Hall that Mr. Hall

1 Mrs. Hall he did it improperly, he left some stuff
2 out?

3 A Correct.

4 Q He did not indicate that that visit had occurred in
5 '93. So I'm asking you based upon your review how
6 the form should have been filled out to alleviate
7 that concern.

8 A With regard to the 1993 visit?

9 Q Well, that's what you told Mrs. Hall. I'm not making
10 that up.

11 A Right.

12 Q That's what you told Mrs. Hall.

13 A I see that.

14 Q And how would you have remedied the problems that you
15 indicated to Mrs. Hall that were on the application?

16 A Based on our review, yes would have been an
17 indication for Question No. 1.

18 Q Mr. Hall should have marked yes in your opinion --

19 A That's correct.

20 Q -- to No. 1? And that what else should he have done
21 to remedy the problem that you identified to
22 Mrs. Hall?

23 A To remedy the problem addressed in that letter would
24 be to give full details below for any health problem
25 indicated in this section.

1 should have marked as Borrower 1 yes, should have
2 circled cancer and should have indicated the 1993
3 removal of a mole and Dr. Hurley's name?

4 A Not just Dr. Hurley's name, but yes.

5 Q What do you mean, not just Dr. Hurley's name, but
6 yes?

7 A The application indicates, "Give full details below
8 for any health problem indicated in this section."
9 There may or may not have been more than one
10 physician.

11 Q Well, now you've reviewed the records. What
12 physician's name are you saying should have been
13 included other than Dr. Hurley?

14 A Are you talking about cancer specifically or any of
15 the conditions?

16 Q No, I'm referring to your letter --

17 A Okay.

18 Q -- of February 10th. And you tell Mrs. Hall that the
19 review showed that Tommy visited a doctor in 1993.
20 On the application Tommy did not indicate this visit
21 had occurred.

22 And I'm asking you where on the form, how should
23 the form have been filled out to properly in
24 apparently your own conclusions have indicated his
25 medical condition at the time. You're telling

1 Q Well, first of all, he should have marked yes instead
2 of no, and should he have circled anything?

3 A Yes.

4 Q What should he have circled to remedy that problem
5 indicated in your letter to Mrs. Hall?

6 A Based on the information that we received, cancer and
7 back.

8 Q You didn't tell Mrs. Hall anything about failure to
9 identify a back problem, did you?

10 A I did not in my letter of February 10th of 2000.

11 Q So to remedy the problems indicated in your letter,
12 it would have been to circle cancer, is that right?

13 A Correct.

14 Q And you believed that Mr. Hall should have marked
15 cancer even though his pathology report showed no
16 cancer?

17 A I believe that he should have marked yes based on all
18 of the documents we received.

19 Q Including a document, a '93 pathology report that
20 said there was no cancer?

21 A Again all -- based on all of the documents we
22 received. And we did receive the pathology report.

23 Q You wouldn't have considered that to be a false
24 application form to circle cancer when he had a
25 pathology report that said there was no cancer?

1 A Based again on all the documents we received, yes.
 2 Q You would have considered that a false report?
 3 A If he marked no? Sorry.
 4 Q If he had circled cancer when he had a pathology
 5 report telling him there was no cancer. Would that
 6 have been a false application?
 7 A Again --
 8 MR. KELLEY: Is your question
 9 that if that's all that exists in this case or
 10 is she to consider all of the other information
 11 that she's aware of?
 12 Q You're referring to a doctor visit in '93 in your
 13 letter to Mrs. Hall that should have been included
 14 and the results of that visit, aren't you?
 15 MR. KELLEY: Object to the form.
 16 Q I'd be happy to go through the letter again with
 17 you.
 18 A No. I am referring to a doctor visit in 1993.
 19 Q And that doctor visit your understanding was for the
 20 removal of a mole?
 21 A Correct.
 22 Q And there was a pathology report that was done
 23 coincidentally, simultaneously or in conjunction with
 24 that doctor visit, wasn't there?
 25 A There was a pathology report along with other

1 Q And so for Mr. Hall --
 2 MR. KELLEY: We've been over this
 3 a number of times, so let's move on.
 4 Q For Mr. Hall to have marked cancer based upon the '93
 5 visit would not have been truthful, would it?
 6 A Again based on the information that we received, a
 7 yes answer is the answer that should have been
 8 marked, according to that information that we
 9 received.
 10 Q From the '93 visit, from the '93 pathology report,
 11 from the '93 hospital record, there's nothing in any
 12 of those that indicate cancer, is there?
 13 MR. KELLEY: Objection, asked and
 14 answered. Come on, Steve, let's move on.
 15 Q Is there?
 16 THE WITNESS: Am I to answer?
 17 MR. KELLEY: Go ahead, answer it
 18 again. It's getting argumentative. I'm going
 19 to put a stop to it soon.
 20 A Again based on the documents that we received.
 21 Q Listen to the question, that's the problem. I'm not
 22 getting the answer to the question that's being
 23 asked.
 24 Based upon the 1993 pathology report,
 25 Dr. Hurley's -- the portions of the records that you

1 documents that reference the 1993 visit.
 2 Q And you indicate in your letter to Mrs. Hall that
 3 Tommy or Mr. Hall did not indicate the visit
 4 occurred, that '93 visit, isn't that what you're
 5 referring to?
 6 A Yes, in the letter it indicates that he did not
 7 indicate that a 1993 visit occurred.
 8 Q And you further indicate to Mrs. Hall that, "Had we
 9 known about the medical condition revealed during
 10 that visit, we would not have accepted the
 11 application;" is that what you indicate in your
 12 letter?
 13 A Had we known about that visit prior to application,
 14 correct.
 15 Q And what is the medical condition in 1993 based on
 16 the 1993 visit that you claim Mr. Hall provided false
 17 information about?
 18 A About the 1993 malignant melanoma indicated in all
 19 the documents we received -- well, not in all.
 20 Within the documents we received, I should say.
 21 Q And in none of the documents from '93, not any?
 22 A That would be correct.
 23 Q In fact, all of the '93 documents that you reviewed
 24 state there was no cancer?
 25 A That's correct.

1 have and the surgical report from the removal of the
 2 '93 mole, is there anything in any of those records
 3 that indicate Mr. Hall had cancer?
 4 A In none of the medical records that we were able to
 5 retain -- obtain from 1993, correct.
 6 Q And so when you refer to the '93 visit that should
 7 have been listed on the application, there was
 8 nothing cancerous to report about that visit, was
 9 there?
 10 MR. KELLEY: Objection, asked and
 11 answered. Six times.
 12 Q There was nothing cancerous to report about the '93
 13 visit, was there?
 14 A Again based on the documents that we received that
 15 indicated that there was a malignant melanoma in
 16 1993, I believe that it should have been a yes
 17 answer.
 18 Q Didn't you say in your letter that the medical
 19 condition that you're referring to was revealed
 20 during that visit?
 21 A It says, "Had we known about the medical condition
 22 revealed during that visit."
 23 Q What information do you have that a medical condition
 24 of melanoma cancer was revealed during the visit?
 25 MR. KELLEY: That's not what the

1 letter says, objection.

2 Q In '93? What information do you have that a medical

3 condition was revealed during the visit of '93?

4 MR. KELLEY: That's a different

5 question. Go ahead.

6 A Do you want me to go through every medical record

7 that we have?

8 MR. KELLEY: Yeah, listen to his

9 question.

10 THE WITNESS: Okay.

11 MR. KELLEY: Listen to his

12 question. Go ahead, Steve.

13 Q What information do you have that Mr. Hall's medical

14 condition was revealed during the '93 visit?

15 A I don't have the 1993 visit records.

16 Q You didn't have those visit records, did you?

17 A No, we had all the other documents.

18 Q Yet it's the failure to reveal information about that

19 visit that's the basis for your letter to Mrs. Hall,

20 isn't it?

21 A Based again on the documents that we had -- are you

22 saying from Dr. Hurley's documents or all documents?

23 Q I'm saying your letter. I'm only talking about your

24 letter.

25 A And we're referring to the 1993 visit as reported in

1 the documents that we have.

2 Q Your letter reflects a doctor visit in '93 that was

3 not revealed by Tom Hall, a medical condition that

4 was revealed during that visit?

5 MR. KELLEY: No, no. Objection.

6 It's not what that letter says.

7 MR. PEDERSEN: It says a medical

8 condition revealed during that visit.

9 MR. KELLEY: "Had we known about

10 the medical condition revealed during that

11 visit." You're reading that letter to say that

12 that means that it was discussed with him on

13 that visit.

14 What this letter is saying is that there is

15 a medical condition that was revealed at that

16 time. Whether it was revealed sometime after

17 that to Tommy Hall is a different issue.

18 Q The only medical condition revealed in 1993 during

19 the '93 visit was the removal of a benign mole, isn't

20 that true?

21 A Based on the documents we have, I would say no.

22 Q Wouldn't you defer to Dr. Hurley to tell us what was

23 revealed in his own medical doctor visit and by that

24 procedure?

25 A I believe I requested the records from Dr. Hurley's

1 office.

2 Q Dr. Hurley would know better than you what condition

3 was revealed during the September -- during the 1993

4 office visit, wouldn't he?

5 A He would know better than me, yes.

6 Q And if he said that it was a benign condition, that a

7 mole was removed, a benign condition, that would

8 differ from what you believe was revealed in the '93

9 visit, isn't it?

10 A I personally don't have anything that says Dr. Hurley

11 said it was a benign visit.

12 Q You don't know whether your counsel does or not

13 today?

14 A I don't believe so.

15 Q You refer in Paragraph 3 of your February 10th letter

16 to the home mortgage insurance contract that allows

17 you to contest the validity of the policy within the

18 two years from the date of the contract. Which

19 portion of the policy are you referring to?

20 A The general provisions portion of the policy.

21 Q Let me clarify. Doesn't that provision -- maybe you

22 can help me. That provision simply states that after

23 two years you cannot test the validity of the

24 insurance contract?

25 A The provision states no statement can be used to void

1 or deny a claim -- wait. It says, "After two years

2 no statement made by you or your joint insured debtor

3 can be used to void this insurance or deny a claim."

4 Q Right. So that's the policy provision that says

5 after the policy is in effect for two years, then we

6 can't go back and look at statements made by the

7 insured to rescind a policy?

8 A Correct.

9 Q That doesn't say the converse, does it? It doesn't

10 say during a two-year period we have the right to

11 rescind the policy?

12 A That we have the right to?

13 Q Right. It doesn't say that, does it?

14 A It states, "After two years no statement made by you

15 or your joint insured debtor can be used to void this

16 insurance or deny a claim."

17 Q Right. And it doesn't state the converse of that,

18 that CUNA has a right to contest the validity of the

19 policy within the two-year period? It simply says

20 after the two years, the -- no statements by the

21 insured can be used to void the policy?

22 A You're correct, that statement is not in that

23 policy -- or in that language.

24 Q So when you told the insured, Mrs. Hall -- let me

25 strike the insured.

81

1 When you told Mrs. Hall that the mortgage
 2 insurance contract had a provision that allowed you
 3 to contest the validity of the policy within the
 4 two-year period, it doesn't say that, does it, the
 5 policy?
 6 A Again it says, "After two years from the effective
 7 date of insurance for you or your joint insured
 8 debtor, no statement made by you or your joint
 9 insured debtor can be used to void this insurance or
 10 deny a claim." Are you asking word for word? No.
 11 Q And the general concept, that doesn't grant the
 12 insurance company the right to contest the validity
 13 of a policy, it simply says after two years we can't?
 14 A It doesn't grant and it doesn't not allow the
 15 insurance company.
 16 Q Right. It doesn't speak to that, right, what an
 17 insurance company can do within the two-year period?
 18 THE WITNESS: Am I not getting
 19 this? I'm sorry. I guess I don't understand
 20 the question.
 21 MR. KELLEY: Well, you're trying
 22 to argue with her about the law here, Steve.
 23 You're better off doing it before the Judge.
 24 Q Did you tell Mrs. --
 25 MR. KELLEY: Just objection for

83

1 A That is not in the letter.
 2 Q Your letter is definitive that no benefits will be
 3 paid either now or in the future, period, isn't that
 4 right?
 5 A I don't think that it is definitive. If Mrs. Hall
 6 would have presented or contacted me that she had
 7 additional information, we certainly would review it.
 8 Q And do you believe this letter opened the door for
 9 Mrs. Hall to do that kind of thing, to provide you
 10 with additional information after you told her that
 11 no benefits will be paid under this contract either
 12 now or in the future? Did you leave a door open for
 13 Mrs. Hall according to the letter?
 14 A I believe there's always a door open, certainly.
 15 Q And that's how you would read your own words, that
 16 you left a door open for Mrs. Hall to provide more
 17 information to you?
 18 A My name and phone number is there. Certainly if
 19 there was more information, I would have been happy
 20 to consider it.
 21 Q That's not what you told Mrs. Hall anywhere on the
 22 letter, though, is it, that you'd be happy to
 23 consider additional information?
 24 MR. KELLEY: Objection, asked and
 25 answered. Move on.

82

1 the record. What she believes about it is
 2 really -- I mean is immaterial. It's going to
 3 be a legal issue that's going to be determined
 4 by the Court whether or not CUNA had the ability
 5 to rescind this policy within the two-year
 6 contestability period.
 7 MR. PEDERSEN: We disagree. I'm
 8 referring to a February 10th letter in which
 9 Ms. Larson affirmatively states what the policy
 10 provides, and I'm suggesting that's a false
 11 statement.
 12 MR. KELLEY: And the policy does
 13 provide that, and she can answer the question.
 14 Q Did you also in your February 10th, 2000 letter tell
 15 Mrs. Hall that no benefits will be paid under this
 16 contract either now or in the future?
 17 A I believe that is in the letter. That is in the
 18 letter, yes.
 19 Q You didn't leave a door open for Mrs. Hall to provide
 20 further information to you?
 21 A Not in this letter specifically. My phone number is
 22 there, though.
 23 Q You didn't suggest to Mrs. Hall that you were still
 24 missing Dr. Hurley's records and if she could get
 25 those, that would be helpful?

84

1 MR. PEDERSEN: Don't raise your
 2 voice, don't raise your voice. You can object,
 3 but you can't yell and raise your voice to me,
 4 not here, not anywhere.
 5 MR. KELLEY: You know, I've been
 6 very patient with you here asking the same
 7 question five times over again.
 8 MR. PEDERSEN: Then just object,
 9 ask me to move on.
 10 MR. KELLEY: Let's move on. I
 11 apologize for raising my voice. Objection, move
 12 on.
 13 MR. PEDERSEN: I don't have any
 14 other questions. For the record, I won't be
 15 yelled at in any -- any time in my career, I'm
 16 not going to be yelled at.
 17 MR. KELLEY: I apologize for
 18 raising my voice, Steve.
 19 MR. PEDERSEN: The deposition is
 20 over. I reserve the right to read and sign the
 21 deposition.
 22 MR. KELLEY: I have some
 23 questions. Please, I apologize for raising my
 24 voice. I apologize for doing so. I have
 25 questions. Are you going to stay for them?

85

1 MR. PEDERSEN: I believe the
2 deposition is over. I will stay because
3 questions from the other side are going to be
4 asked. I have additional questions which I have
5 not asked, but I won't continue with being
6 yelled at in a deposition.

7 MR. KELLEY: You can continue on
8 asking the questions, Steve.

9 MR. PEDERSEN: Not being yelled
10 at in a deposition, I won't. I won't do that.

11 MR. KELLEY: Steve, ask your
12 questions.

13 MR. PEDERSEN: No, I'm not going
14 to ask further questions.

15 MR. KELLEY: I promise you that I
16 won't raise my voice again. Ask your
17 questions.

18 MR. PEDERSEN: No.

19 MR. KELLEY: Okay. Your choice.

20 EXAMINATION

21 BY MR. KELLEY:

22 Q I have a couple questions for you.

23 A Okay.

24 Q Oh, at any time did you have any conversation with

25 Mrs. Hall's attorneys about the status of this claim?

87

1 authorization along with depositions, and he noted a
2 taped deposition from Mr. Hall prior to his death,
3 along with medical providers, which may result in
4 medical malpractice lawsuits due to the
5 understatement of a 1993 pathology report.

6 Q Did you indicate to him at that time that you would
7 be receptive to reviewing that information?

8 A I did. I indicated that if he had additional or
9 further information, we'd be happy to review that
10 information as long as it was submitted in writing to
11 us along with the authorization.

12 Q Was this the only contact that you had with
13 plaintiff's attorneys?

14 A It was.

15 Q Did you ever receive anything further, you personally
16 ever receive anything further from Mr. Pedersen or
17 any of the -- Mrs. Hall's attorneys?

18 A I have not personally received anything.

19 MR. KELLEY: Okay. That's all I
20 have.

21 MR. PEDERSEN: I have nothing.
22 (3:35 p.m.)

23

24

25

86

1 A I did receive a phone call on March 14th, 2001.

2 MR. PEDERSEN: I believe she's
3 referring to a record that hasn't been provided
4 after you reviewed the documents, a telephone
5 data sheet. I've never seen that before.

6 MR. KELLEY: Okay. Let me take a
7 look at it. There you go.

8 MR. PEDERSEN: I'd like a copy of
9 this.

10 MR. KELLEY: We'll get it for
11 you.

12 Q Did you have a conversation with plaintiff's counsel?

13 A I did.

14 Q Which counsel was that, which lawyer was it?

15 A Steve Pedersen.

16 Q Would you describe that for the record, what that
17 conversation was about?

18 A Mr. Pedersen called to indicate that he represented
19 the estate of Tommy Hall and his wife Nancy Hall in
20 numerous litigations and wished to discuss the file
21 with me.

22 Q What else did you discuss with him?

23 A I discussed that in order to further discuss the
24 file, that I would need written authorization from
25 him, and he further stated that he had that

88

1 STATE OF WISCONSIN }
2 COUNTY OF DANE } ss

3 I, LISA A. CREERON, a Notary Public in and for
4 the State of Wisconsin, do hereby certify that the
5 above deposition was taken before me on the 1st
6 day of November, 2001, commencing at 1:28 p.m., at
7 Melll, Walker, Pease & Ruhly, 10 East Doty Street, in
8 the City of Madison, in said County and State, that it
9 was taken at the request of the plaintiff, upon verbal
10 interrogatories, that it was taken in shorthand by me, a
11 competent court reporter and disinterested person,
12 approved by all parties in interest, and thereafter
13 reduced to typewriting by me; that the said deposition is
14 a true record of the deponent's testimony; that the said
15 deposition is to be used in the above-entitled action now
16 pending in Federal Court; that the deposition was taken
17 pursuant to notice; that the said BRENDA LARSON,
18 before examination, was sworn by me to testify the truth,
19 the whole truth, and nothing but the truth relative to
20 said cause. Dated at Madison, Wisconsin, this 5th day of
21 November, 2001.

22 NOTARY PUBLIC, STATE OF WISCONSIN
23 REGISTERED PROFESSIONAL REPORTER
24
25

BRENDA LARSON - 11/01/01 / HALL V. CUMMINGS MUTUAL

| | | | |
|---|---|--|---|
| <p>&</p> <p>& 2:10,18 88:7</p> <p>'93 31:23,25 32:7,13,15,18,21,22 34:25 35:4 37:24 38:16,24 39:20 42:18 43:4 44:4,7 46:2,16 48:4 49:11,23 52:1,16,18,24 55:8 57:22 59:21,23,24 60:15 69:5,8 71:5 72:19 73:12 74:4,21,23 75:4,10,10,11 76:2,6,12 77:2,3,14 78:2,19 79:8</p> <p>'96 33:9 34:11,12,19 35:10,13,19,20,21 46:16</p> <p>'98 29:23 36:3,6 37:20 39:1 41:24 42:3,11 43:3 44:18,25 46:2 57:2 60:2</p> <p>'99 8:16 9:5 14:9,18,24 17:21 37:19 38:5 43:15 44:11 46:12,16 58:20 59:14,19,20,24</p> | <p>81:22 82:1 85:25 86:17</p> <p>above 3:10 23:18 24:6 88:5</p> <p>above-entitled 2:2 88:15</p> <p>Absolutely 68:24</p> <p>accepted 74:10</p> <p>according 9:6 38:3 75:8 83:13</p> <p>accurate 22:14 28:4 29:7</p> <p>acquired 42:17</p> <p>across 45:16</p> <p>action 88:15</p> <p>actual 7:8 21:23 26:18 51:4</p> <p>Actually 34:13 42:19 47:25</p> <p>additional 28:22 83:7,10,23 85:4 87:8</p> <p>address 18:19 69:22</p> <p>addressed 71:23</p> <p>affirmative 61:7,14</p> <p>affirmatively 82:9</p> <p>after 15:2 20:16,17 21:19,22 29:2,14 36:12 40:24 51:15,16 52:22 54:4 58:15 62:2,24 78:16 79:22 80:1,5,14,20 81:6,13 83:10 86:4</p> <p>again 14:9 32:17 34:23 48:13 53:18 61:23 72:21 73:1,7,16 75:6,18,20 76:14 77:21 81:6 84:7 85:16</p> <p>against 62:2</p> <p>ago 37:16 56:7,9,12</p> <p>agree 7:25 31:17 45:19</p> <p>ahead 75:17 77:5,12</p> <p>al 2:4</p> <p>alleviate 71:6</p> <p>allow 81:14</p> <p>allowed 81:2</p> <p>allows 79:16</p> <p>alone 65:4</p> <p>along 22:23 32:14,17 44:6 53:6 61:15 73:25 87:1,3,11</p> <p>already 34:4 52:10 66:3</p> <p>always 21:24 83:14</p> <p>amended 40:24</p> <p>amount 7:17 8:8,9,11,12 65:10,10 66:3,4 67:2</p> <p>another 42:19 46:10 48:1 54:1 57:19</p> <p>Ansfield 31:11 49:3,7,15</p> <p>answer 25:15 29:1 30:14,15 31:19 34:23 40:6 41:18 45:3 51:18 57:4 65:25 67:10,13 75:7,7,16,17,22 76:17 82:13</p> <p>answered 34:22 41:12 60:20 75:14 76:11 83:25</p> <p>answers 65:23</p> <p>anticipation 19:25</p> <p>anyone 66:14</p> <p>anything 6:17 25:7 33:3 68:6 72:2,8 76:2 79:10 87:15,16,18</p> <p>anywhere 33:3 48:23 59:6 83:21 84:4</p> <p>apologize 57:7 84:11,17,23,24</p> <p>apparent 57:12,15</p> <p>apparently 70:24</p> <p>appeared 23:11,12 57:12</p> <p>appearing 2:16,19</p> <p>appears 43:8 46:6</p> <p>applicant's 25:13</p> <p>application 14:12,21 23:2,6 24:19,25 25:4,7,14,16,21 26:11 27:22 28:1,6,16,24 29:7,10,14,17 30:3,11 37:7 39:5 41:8,11 44:19,25 50:18 57:1 59:2 60:25 62:3 63:1 64:1,5,19,20 69:6,7,9,19 70:7,20 71:15 72:24 73:6 74:11,13 76:7</p> <p>applied 26:23 64:5 65:4</p> <p>apply 26:5 31:4 65:3,8 69:18</p> <p>appreciate 69:1</p> <p>approved 29:2 88:12</p> <p>approximately 13:25 14:4 15:1 18:5</p> <p>April 4:10 30:17 36:3 44:13 46:2 59:15 60:2</p> <p>area 12:6 13:10 15:20 21:8,9,10 66:22 67:4,15 69:19</p> <p>aren't 6:13 11:12 31:21 48:8,20 73:14</p> <p>argue 81:22</p> <p>argumentative 47:8 62:12 75:18</p> <p>articles 4:15</p> <p>ask 19:17 33:21 35:9 62:19,25 65:23 66:6 84:9 85:11,14,16</p> <p>Asked 34:22 35:16 49:12 59:11 66:2 75:13,23 76:10 83:24 85:4,5</p> <p>asking 12:24 17:1,8 25:25 28:19,19 36:14 42:21 43:23 54:12 67:20</p> | <p>68:9 70:22 71:5 81:10 84:6 85:8</p> <p>assume 32:2 57:15 59:9</p> <p>attached 49:15</p> <p>attempt 50:8 53:8,12</p> <p>attempted 49:5</p> <p>attempting 49:25</p> <p>attend 9:19</p> <p>attended 12:19,22 13:12</p> <p>Attorney 3:3,4 4:4,6,7,11 53:10,12,17,22,25 54:2,5,6,11,17</p> <p>attorney's 54:19</p> <p>Attorneys 2:10,18 85:25 87:13,17</p> <p>August 9:10 21:2</p> <p>authority 50:25 52:6,7</p> <p>authorization 50:14,17 64:25 65:5,7 86:24 87:1,11</p> <p>available 29:8</p> <p>aware 6:1 21:13 44:7 51:19 57:8 73:11</p> <p>away 13:8</p> | <p>22 40:6 41:2,18 42:23 45:3,7,16,18,22 51:18 55:16 57:4 67:12 68:11,17,22 79:22,25 80:3,15,21 81:9,17 82:13 84:2 85:7</p> <p>can't 23:19 34:3 80:6 81:13 84:3</p> <p>cancer 10:14,21 11:6,20,23 29:18,23 30:3,11 33:4 36:6 37:6,21,24 39:1,6,23 41:24 42:11 44:5,8,12,24 46:24 47:4,4 48:23 52:2 55:7,8 56:25 59:1 60:9,15,18,22,23 61:4,9 62:20 70:2,14 72:6,12,15,16,20,24,25 73:4,5 74:24 75:4,12 76:3,24</p> <p>cancerous 11:11 13:18,18,19 42:4 76:8,12</p> <p>cannot 23:20 79:23</p> <p>carcinoma 38:14</p> <p>care 48:7,18 51:1</p> <p>career 84:15</p> <p>case 5:18 8:1 26:24 27:8 40:14 73:9</p> <p>cases 7:23,25</p> <p>Cashdollar 42:1 52:19 57:7</p> <p>categories 61:22 65:21 66:17</p> <p>category 65:24</p> <p>cause 3:10 29:13 88:20</p> <p>caused 27:10 36:15</p> <p>cell 13:17</p> <p>cells 13:16</p> <p>certain 13:11 16:12</p> <p>certainly 6:16 10:20 12:13 62:6 65:7 83:7,14,18</p> <p>certificate 22:24 23:1,3,7,10,15 24:15,16,20,24 25:8 26:7,11,18,25 27:9,25 29:11,19</p> <p>certify 88:4</p> <p>cervical 57:14</p> <p>Chambersburg 48:3,6,18 54:22 60:15</p> <p>changes 33:2</p> <p>characteristics 11:2</p> <p>charge 66:8 67:6,8</p> <p>Charlesworth's 30:8,9 37:9</p> <p>check 13:7 48:5 69:17</p> <p>checked 60:25</p> <p>Chicklo 37:11 38:19 41:25 57:6</p> <p>choice 85:19</p> <p>chronological 19:6 20:11 52:21</p> <p>chronologically 16:25 22:15 36:21</p> <p>Chronology 3:6 19:19 22:1,8</p> <p>circle 69:17 72:12,24</p> <p>circled 70:2 72:2,4 73:4</p> <p>circulated 20:5</p> <p>circumstances 20:8</p> <p>City 2:11 88:8</p> <p>claim 5:19 7:21 8:24 14:12,16,24 16:7,12 17:10,16,23 18:1,6,8,9,19 19:1,5 21:11,23,25 22:17,21 23,23 1 27:8 34:25 37:2 40:18 47:21,22 49:21 51:7 53:4 56:15 62:7 63:16 68:10 74:16 80:1,3,16 81:10 85:25</p> <p>claims 8:18,22,24 25:9,2,4,6,9 17:4 31:3 55:12,16,25 56:19</p> <p>clarify 16:1,9 28:2 59:12 79:21</p> <p>classes 12:8,10</p> <p>clear 52:14 57:12</p> <p>closed 20:16,18 21:25</p> <p>co-homeowner 64:8</p> <p>coincidentally 73:23</p> <p>coincides 7:17</p> <p>collected 65:10 66:3 67:2</p> <p>combination 60:10</p> <p>combined 37:5</p> <p>Come 63:5 67:3 75:14</p> <p>comes 16:23 51:12 66:14</p> <p>coming 16:12</p> <p>commencing 2:12 88:6</p> <p>comment 46:3,5</p> <p>comments 49:18</p> <p>communicating 27:3</p> <p>company 7:12 81:12,15,17</p> <p>company's 40:11</p> <p>competent 88:11</p> <p>compiling 46:19</p> <p>complaint 40:24</p> <p>complete 14:11</p> <p>completed 21:23</p> <p>computer 5:23 20:23 21:1,16,19</p> <p>concept 81:11</p> <p>concern 29:14 35:8 39:13 71:7</p> <p>concerning 31:2 48:3</p> <p>concerns 39:10</p> <p>conclude 62:4</p> |
| <p>*</p> <p>* 3:7,7,7,7</p> <p>1</p> <p>1 3:6 20:6,7 25:15,17,19 41:12 69:9 70:1 71:17,20</p> <p>10 2:10 88:7</p> <p>10th 68:16,18 70:18 72:10 79:15 82:8,14</p> <p>14th 86:1</p> <p>15th 34:14</p> <p>17108 2:19</p> <p>17th 41:25 42:16 44:11 57:6 58:19 18:4,3</p> <p>1988 57:13</p> <p>1989 42:8</p> <p>1993 32:23 37:13 38:8,20 42:7,9,14 43:5,13 46:15 48:21 49:13 57:10,24 58:12 70:2,19 71:8 73:18 74:1,7,15,16,18 75:24 76:5,16 77:15,25 78:18 79:3 87:5</p> <p>1996 30:19 33:8 35:7,18,24 36:2 46:15 60:1,6,7</p> <p>1997 9:10,10</p> <p>1998 30:17 44:13 57:16 59:15</p> <p>1999 6:25 34:14 37:10,18 42:16 57:6</p> <p>1:28 2:13 88:6</p> <p>1st 2:12 53:19 54:1,4,5 88:5</p> | <p>2</p> <p>2 63:20 64:1 20:3,6</p> <p>2000 4:10 14:10 19:10 44:8 50:5 53:21 68:18 72:10 82:14</p> <p>2001 2:12 4:3 21:2 86:1 88:6,21</p> <p>22nd 37:10,18,19 38:5,12 59:19</p> <p>2nd 52:22</p> | <p>B</p> <p>back 14:15 30:19 31:6 32:25 37:14,16 38:6,8 59:12 60:7 61:5 72:7,9 80:6</p> <p>background 6:19 9:11</p> <p>balance 8:3 62:14</p> <p>Based 24:15,16 26:25 37:22 38:18 44:21 46:25 47:2,21,22 59:11,13 63:16 71:5,16 72:6,17,21 73:1 74:15 75:4,6,20,24 76:14 77:21 78:21</p> <p>basis 26:13,20 34:25 36:9,19 55:20 68:8 77:19</p> <p>bear 64:23,24</p> <p>became 8:16 44:7</p> <p>Because 7:7 14:11 21:22 22:8,13 23:25 29:25 33:8 39:12 46:22 51:21 55:1 63:7 65:3 68:8 85:2</p> <p>become 15:10</p> <p>before 2:7 14:1,6,13 19:21 28:22 33:24 37:1,1,4 44:17 53:1 60:4,21,24 65:16 81:23 86:5 88:5,18</p> <p>behalf 2:16</p> <p>believe 6:2,4 20:15,22 23:16 24:2 25:22 26:20 27:20 30:2,10 33:9 34:13,18 36:5 37:6,18,19 40:10 42:2,11 43:2,3 45:14 47:25 50:25 56:25 57:5,21,23 58:9,14,23 60:16 62:10 63:21 66:5 72:17 76:16 78:25 79:8,14 82:17 83:8,14 85:1 86:2</p> <p>believed 29:11 41:23 72:14</p> <p>believes 58:15 82:1</p> <p>below 69:20 70:7 71:24</p> <p>beneficiaries 63:24</p> <p>beneficiary 7:15 63:25</p> <p>benefits 7:14,21 9:7 25:4,7 26:11 41:1 62:15 65:11 82:15 83:2,11</p> <p>benign 11:2,4,9,12,15 78:19 79:6,7,11</p> <p>besides 34:10</p> <p>best 18:7 28:5 65:24,25 66:6</p> <p>better 49:10 79:2,5 81:23</p> <p>between 18:15 64:11</p> <p>bill 6:17 15:13,16 18:22</p> <p>binder 6:5</p> <p>bore 64:21</p> <p>Borrower 25:17,19 63:20 64:1 70:1</p> <p>both 17:17</p> <p>bottom 53:25</p> <p>box 39:12,12 61:1 69:17</p> <p>break 65:18 67:12</p> <p>Breese 14:2,3</p> <p>BRENDA 2:1 3:8 5:7 88:17</p> <p>Brenda's 4:22</p> <p>bring 5:16,18 68:5</p> <p>bringing 5:23</p> <p>brought 6:2 49:20</p> <p>bulletin 4:9</p> | <p>C</p> <p>C-H-I-C-K-L-O 37:11</p> <p>call 28:21 43:18,25 51:25 62:18,23,24 63:3,6,14 86:1</p> <p>called 3:9 7:6 63:12 86:18</p> <p>calling 63:15,17</p> <p>calls 28:17 32:10 43:16 53:7</p> <p>came 18:3,23</p> <p>Camp 2:16</p> <p>can 6:16 8:13 9:15 16:1 22:15 23:18 27:20 29:1 30:14,15 31:19 34:</p> |

BRENDA LARSON - 11/01/01 / HALL V. CUNA MUTUAL

concluded 61:16
 conclusion 28:18, 19 36:16 41:23
 conclusions 16:13 70:24
 condition 69:17, 22 70:25 74:9, 15
 76:19, 21, 23 77:3, 14 78:3, 8, 10, 15,
 18 79:2, 6, 7
 conditions 61:11 69:18 70:15
 conduct 26:12 40:11, 12
 conducting 26:19
 confused 56:18
 conjunction 73:23
 consider 49:21, 24 73:10 83:20, 23
 consideration 35:2, 3 41:6 42:20
 59:22
 considered 15:5 38:21 72:23 73:2
 contact 14:23 52:4, 7 54:4 62:22
 87:12
 contacted 50:4, 12 83:6
 contain 35:19
 contained 17:11 51:20 53:4 54:25
 contemporaneous 44:19, 22, 23
 45:6, 7, 20, 23 46:3, 7, 9 48:10, 13
 contemporaneously 20:13
 contention 40:9
 contest 79:17 80:18 81:3, 12
 contestability 82:6
 continually 40:13
 continue 65:17 85:5, 7
 continuing 12:13, 14, 16 40:20 56:
 1, 15, 19
 contract 79:16, 18, 24 81:2 82:16
 83:11
 conversation 49:19 51:5 85:24
 86:12, 17
 converse 80:9, 17
 copies 20:5 53:13
 copy 19:14 22:23, 25 23:18, 22, 24
 24:4, 19 68:17, 20 86:8
 corporate 67:25
 Correct 5:9 7:19, 25 11:7, 19, 21
 14:19, 22, 25 15:4 24:16 5:19 8:20
 25:21 3:22 24:17 25:3, 6, 18, 20
 26:25 27:14, 17 28:7, 10, 13 29:9
 31:10 37:3 38:23 39:9, 11, 14 44:17
 46:18, 21 49:2 50:21, 24 51:11, 24
 52:25 53:4 55:3 58:21, 22 60:20
 61:11, 19 66:13 71:3, 19 72:13 73:
 21 74:14, 22, 25 76:5 80:8, 22
 couldn't 51:3
 counsel 5:10, 20 6:6 56:12 79:12
 86:12, 14
 counsel's 40:9
 County 2:11 88:2, 8
 couple 56:6, 9, 12 85:22
 Court 2:6 82:4 88:11, 16
 coverage 29:3 53:2 63:22 64:5, 6
 65:3, 8
 covering 14:11
 credit 6:22, 23 7:2, 3, 6, 7, 15 8:4, 7,
 17 15:2, 11 18:25 24:3 25:4 63:25
 CREERON 2:7 88:3
 criminal 41:16
 crossed 64:4
 CUNA 2:4 4:13 6:21 7:11 8:7, 10,
 19, 20 9:4, 9, 10 13:20 15:17, 21 18:
 10, 11, 18, 23 21:24 26:15 28:20 29:
 6 62:13, 17 65:9, 13, 15, 22 66:7, 8,
 19, 24 67:1 68:5 80:18 82:4
 currently 6:20 13:21
 custom 8:10

D

damage 68:10
 damages 68:12
 Dane 2:11 88:2
 data 86:5
 date 12:20, 21 21:1, 2, 6, 7, 7 23:6
 29:15 30:12, 17 31:7 33:8, 9 37:10,
 17 38:2, 4 55:16 60:6 64:21, 23, 24
 79:18 81:7
 dated 48:19 53:24 61:8 88:20
 dates 30:5 52:16 69:23
 day 2:12 16:11 52:22 54:22 88:6,
 20
 deal 17:3, 3 41:3
 dealing 12:23
 death 22:23 23:1, 2, 7, 8, 9, 15 24:15,
 16, 19, 24 25:8 26:7, 10, 25 27:9, 24
 29:10, 13, 19 63:9 87:2
 Deb 13:21, 24 14:5 67:14
 debtor 80:2, 15 81:8, 9
 deceased 62:25
 December 17:20 57:16

decided 10:3
 deciding 62:15
 decision 36:12 53:2 59:11, 13 63:3
 defendants 2:5
 defer 78:22
 define 45:7
 defined 26:16
 definition 12:5
 definitive 32:12 83:2, 5
 degree 9:21, 23, 25 10:2, 4
 demonstrated 57:9
 denial 34:25
 deny 62:15 80:1, 3, 16 81:10
 denying 47:21, 22
 department 4:10 14:15, 17, 20 19:5
 deponent's 88:14
 deposed 31:11 39:17, 21
 DEPOSITION 2:1 4:2, 23 5:1, 11,
 12, 16 20:6 36:25 37:1 39:22 40:
 14, 16 51:13, 19 55:5 84:19, 21 85:2,
 6, 10 87:2 88:5, 13, 15, 16
 depositions 87:1
 dermal 57:9, 22 58:8
 describe 86:16
 description 17:24
 designate 67:25
 designees 67:25
 details 69:20 70:7 71:24
 determine 13:11
 determined 82:3
 development 12:12
 diagnosed 26:3 69:15
 diagnosis 23:7 38:13
 dictations 45:9
 didn't 10:2 26:9 28:15, 22 31:8 32:
 19 33:13 34:15 37:1 38:25 47:18
 49:7, 10 50:11 51:3, 8, 17, 21, 22 52:
 6, 10, 17 54:6, 8, 16, 18 60:22 61:5
 62:23 65:3, 8 72:8 76:18 77:16 82:
 19, 23
 died 60:21, 24
 dies 27:19
 differ 79:8
 different 7:3 31:4 36:11 41:13 52:
 16 68:4 77:4 78:17
 directly 7:11 49:1
 disagree 82:7
 discovery 68:11
 discuss 13:13 86:20, 22, 23
 discussed 12:25 13:1 78:12 86:23
 discussing 20:4 24:24 36:3
 Discussion 12:3 20:2 68:14
 disease 42:9
 disinterested 88:11
 disk 42:9
 displayed 57:14
 distinguish 18:14
 District 2:5, 6
 division 15:3, 21 66:17, 24
 divisions 67:1
 divorced 64:17
 doctor 30:22, 24 31:13, 13, 22, 23
 32:4 35:9 36:3 39:20 45:15, 22 46:
 16 47:4, 6 49:25 50:3, 9 51:1 57:20
 58:15 59:9 60:2 69:5, 8 70:19 73:
 12, 18, 19, 24 78:2, 23
 doctor's 58:3
 doctors 17:4 33:13, 16 46:12
 document 20:4, 8, 10, 15 21:4, 15
 32:20 53:5 55:22 56:24 61:6 72:19
 documents 4:3, 13 6:13, 14 13:11
 25:2 32:14, 17 44:3, 6 53:6 58:19
 60:10 61:18 72:18, 21 73:1 74:1,
 19, 20, 21, 23 75:20 76:14 77:17, 21,
 22, 22 78:1, 21 86:4
 does 21:6 38:17 40:1 43:10, 11, 18,
 25 45:2, 5, 9 48:22, 23 51:17 57:18
 59:6 79:12 80:9, 13 81:4 82:12
 doesn't 28:11 38:16 43:13, 18, 25
 45:10, 13 57:17 59:5 61:10 67:22
 79:21 80:9, 9, 13, 17 81:4, 11, 14, 14,
 16
 doing 17:17 21:22 36:8 81:23 84:
 24
 done 22:5 24:21 34:12 38:15 56:
 16 60:8 61:4 71:20 73:22
 door 82:19 83:8, 12, 14, 16
 Doty 2:10 88:7
 doubt 51:5 64:15
 down 16:11 31:14 67:12
 due 87:4
 duly 3:9
 duration 69:23

During 4:1 37:2, 13, 14 74:9 76:
 20, 22, 24 77:3, 14 78:4, 8, 10, 18 79:
 3, 3 80:10
 duties 9:6
 duty 9:3 28:4, 11, 14, 21 29:6
 dying 27:15
 dysplastic 10:24 11:1, 5, 15, 20 12:
 5 13:6, 13 32:25 33:2

E

e-mail 4:8, 8
 each 36:15 58:23
 earlier 22:20 31:11
 early 57:13
 East 2:10 88:7
 education 12:11, 13, 14, 16
 effect 80:5
 effective 81:6
 either 5:19 18:1, 2 24:5 27:5 31:
 12, 21 40:7 45:4 46:16 49:17 51:25
 61:6 82:16 83:3, 11
 elected 63:21
 else 66:14 71:20 86:22
 emergency 48:7, 17
 encountered 36:11
 encountering 36:13
 end 14:24
 Enders' 52:19
 entire 55:12, 16, 25 58:7
 entirety 17:13
 entries 5:23 20:13 62:2
 entry 23:19 42:10
 Ernest 30:8
 essence 41:7
 estate 86:19
 et 2:4
 evaluating 18:2 51:7
 evaluation 32:16 40:17 56:15
 Even 39:10 63:14 72:15
 event 7:8 45:6, 8, 10, 13, 24 46:23
 events 19:7 20:14, 14 22:1, 8 44:19
 45:20 48:17 50:9 51:22
 ever 10:8 22:6 26:2 29:22 33:16
 35:9 55:13 56:10 61:3 62:18 69:
 10, 15 87:15, 16
 every 16:17, 20 22:3 27:8 77:6
 everything 6:2, 9, 18 35:6
 evidence 34:10
 exact 12:20
 exactly 69:11
 Examination 3:2 5:3 85:20 88:18
 examiner 8:18 9:2, 3, 4, 9 31:3
 exception 4:25
 excised 37:13 38:8 57:11, 12
 Exhibit 20:6, 7
 Exhibits 3:5
 exists 7:18 73:9
 expected 47:9
 experience 10:5 30:22, 24 62:13,
 17
 extent 56:14
 extinguishes 7:22

F

fact 11:8 74:23
 factors 62:14
 failure 40:25 72:8 77:18
 fair 36:18
 false 72:23 73:2, 6 74:16 82:10
 far 38:5
 fax 21:9 24:1, 4
 faxed 21:8
 February 19:10 41:25 42:16, 16
 44:11 52:22 53:19 54:1, 4, 5 57:6
 58:19 68:16, 18 70:18 72:10 79:15
 82:8, 14
 Federal 24:3 88:16
 feel 54:8
 felt 29:24
 few 19:17
 figure 43:18
 file 5:19 14:24 15:7 17:11 18:3, 9,
 24 20:16, 17, 18, 20, 23 21:11, 23, 25
 22:17, 21 33:11 50:5 53:4, 24 86:
 20, 24
 filed 21:14, 19
 files 17:4, 15, 25 18:1, 1, 4, 6, 8, 19
 filled 14:21 29:17 30:4, 11 44:25
 57:1 59:1 70:23 71:6
 filling 64:19
 finance 66:8, 25
 financial 66:22

find 23:9 39:21 50:9 53:12 54:18
 67:13 68:17
 finding 11:4, 4, 15, 18
 findings 10:14, 22 12:9 45:16, 20
 fine 4:24 5:2 43:24
 finished 57:5
 first 3:9 4:20 6:20 14:23 15:2 16:
 22, 23, 24, 25 18:9, 12, 13, 15, 19 19:
 16 22:5, 19, 21 25:2 30:13 32:1 33:
 22 43:20 59:21 66:2 72:1
 Fisher 4:4 14:7, 8, 13 15:12
 fit 6:17
 five 84:7
 follow-up 33:1
 following 26:4 69:17
 follows 3:11
 form 4:4 28:25 29:7 30:14 31:18
 34:21 38:1 39:5 40:2, 4 41:8, 9, 17
 57:3 64:12, 16 70:22, 23 71:6 72:24
 73:15
 found 12:7 28:21 37:23 43:11, 14,
 15 50:6 54:15, 16
 four 54:1, 17
 frame 12:21 14:14
 fraud 4:5, 14, 17 41:15, 16 61:2
 front 36:22, 23
 full 5:5 69:20 70:7 71:24
 further 24:20 25:9, 12, 22 74:8 82:
 20 85:14 86:23, 25 87:9, 15, 16
 future 82:16 83:3, 12

G

gave 31:12 51:19
 General 4:4, 7, 11 65:21 79:20 81:
 11
 General's 4:6
 generated 21:2
 getting 56:10 75:18, 22 81:18
 give 64:25 69:20 70:7 71:24
 given 38:5
 gives 38:2
 glasses 24:23
 goes 68:9
 Good 16:6 50:20
 got 59:10 68:8
 graduated 9:12
 grant 81:11, 14
 Group 2:4 15:17
 guess 11:11 14:10 16:8 17:12, 22
 44:10 47:17 62:17 81:19

H

H-A-G-L-U-N-D 13:23 67:17
 Haglund 13:21, 22, 24 14:5 67:14,
 16
 half 8:14
 Hall 2:3 5:19 8:1 14:21, 24 16:7
 18:3, 24 24:12 25:19 26:5 27:22
 29:17, 22 30:2, 10 35:4, 5, 6 36:5 37:
 6, 20, 23 38:2, 6, 9, 25 39:23, 24 41:7,
 23 42:3, 11, 17 43:3, 19 44:1, 7, 12
 46:24 47:5, 9 50:15 56:25 57:9, 21
 58:25 62:18 63:19 64:7, 11, 16 68:
 16, 18 69:5, 7, 25, 25, 70:18 71:1,
 9, 12, 15, 18, 22 72:5, 8, 14 73:13 74:
 2, 3, 8, 16 75:1, 4 76:3 77:19 78:3, 17
 80:24 81:1 82:15, 19, 23 83:5, 9, 13,
 16, 21 86:19, 19 87:2
 Hall's 29:6 44:23 51:1 58:2, 9, 11,
 14 77:13 85:25 87:17
 Halls 8:5 17:10
 handling 22:16
 handwritten 48:17
 happened 20:11, 12 22:11
 happening 46:23 47:11
 happy 73:16 83:19 22 87:9
 Harrisburg 2:19 54:2, 18
 having 26:4 37:15 69:16
 health 64:2 69:20 70:8 71:24
 help 17:3 22:10 79:22
 helpful 82:25
 helping 18:18
 helps 18:4
 here 12:20 13:7 19:21 20:15 24:5
 27:2, 7 35:12 39:16 40:18 56:21
 68:17 69:11 81:22 84:4, 6
 hereby 88:4
 herniated 42:9
 highlighted 36:22 61:20, 22, 23
 highlighting 36:23 52:16
 Hill 2:16
 himself 31:24 39:10

BRENDA LARSON - 11/01/01 / HALL V. CUMMINS MUTUAL

history 14:16 19:6 25:13 30:18
37:12,14,15,22 38:3,6,7,20 42:6
43:7 44:3 45:23 46:6,25 57:18,19,
25 58:4,6,10,17 59:4,6,9,10 62:6
63:11,14
home 7:8 8:6 18:25 63:2 67:2,6,8,
14 79:16
homeowner's 59:1 62:15
honor 61:16
Hopefully 45:11
Hospital 9:17 48:3,6,18 54:22 75:
11
Hospital's 9:12
hospitalization 35:20
house 7:24 66:12
How 6:23 9:8,19 10:13 13:22,24
14:3,8 15:14 17:15,25 18:23 20:
11,17 21:15,21 37:23 38:5 61:25
62:3,14 67:16 68:4 70:22 71:5,14
83:15
however 22:5
Hurley 39:17,20 40:19 48:1 49:8
51:8,19 54:15 70:13 78:22 79:2,10
Hurley's 40:14,15 47:24 48:25 49:
4,5 52:22 53:7 54:9,15,23 55:4,13
56:4,11 60:14 70:3,4,5 75:25 77:
22 78:25 82:24
husband's 62:19 63:9

I'd 6:19 19:14 22:14 29:25 73:16
86:8
idea 27:18 45:2 65:14
identification 20:7
identified 3:5 34:19 71:21
identify 36:15 72:9
illness 37:15
imagine 23:25 66:21
immaterial 40:5 82:2
important 49:22,24 62:7
improperly 71:1
in-scapular 57:9
include 49:14
included 41:6 50:22 58:7 70:13
73:13
includes 40:24
including 4:3 40:14 44:4 72:19
incorrect 26:21
increase 57:15
independent 17:9
indicate 23:11,12 30:5,9 39:4 43:
10 48:23 55:7 57:18 61:5 65:23
69:4,6,8 70:20 71:4 74:2,3,7,8,11
75:12 76:3 86:18 87:6
indicated 32:3,18 62:22 69:10,21
70:2,8,24 71:15,25 72:5,11 74:18
76:15 87:8
indicates 5:16 30:18 32:25 33:1,4,
8 36:1 37:12 42:5 43:5,6 57:8 60:1
69:10 70:7 74:6
indicating 32:5,6 50:5
indication 44:18 58:24 71:17
individuals 40:23 63:20
information 4:7 6:19 21:10 24:6,
13,18 25:24 26:21 27:21 28:8,22
29:8,16,22 30:1 31:13 32:3,5 34:
15 37:4,5 38:4,19,25 39:19 40:13
41:5,22 42:5,12,13,17,20 43:2,11
46:19 47:22 50:15 51:20 53:9,17,
22 54:11 56:10 57:17 64:3 65:1
72:6 73:10 74:17 75:6,8 76:23 77:
2,13,18 82:20 83:7,10,17,19,23 87:
7,9,10
initial 14:21
inquiry 13:10
instance 2:3
instead 20:24 63:15,17 67:25 72:1
insurance 4:5,9,12,14,16 6:22 23:
7,1,2,3,4,6,7,13 8:6,17,20 15:3,11,
22 18:25 40:11 41:7 53:3 67:3,7,8
79:16,24 80:3,16 81:2,7,9,12,15,17
insure 8:13,14
insured 8:11 28:4 60:21 61:8,14
62:1,4 63:19 80:2,7,15,21,24,25
81:7,9
insured's 62:24
insureds 28:20
insuring 63:23
interest 88:12
interject 27:2
internal 4:13
interpretation 38:3
interrogatories 88:10

investigate 27:13 29:12
investigated 61:2
investigation 17:16 24:20 25:9,
12,22 26:12,13,19 27:8 36:10 40:6,
20 41:15,19 56:20 62:8
investigative 50:22
involved 16:7 17:10 18:10 53:25
54:5 63:8 67:20
involvement 22:16,20
Iowa 15:25 16:1
Isn't 11:15 15:7 28:6 32:5 33:6 35:
4 41:10 44:15 45:24 48:11 53:18
58:21 60:25 61:4 74:4 77:20 78:19
79:9 83:3
issue 78:17 82:3
issued 64:6
issues 43:1
item 36:4,15
itself 25:14

J

January 37:10,18,19 38:5,12,16
43:15 50:5 53:18,24 54:3 59:13,
19,19
Jean 5:7
job 17:24
Jody 14:2,3
joined 14:17 15:2
joint 64:6,19 80:2,15 81:7,8
Judge 81:23
July 34:14 58:20 59:14,19

K

keep 13:3
Kelley 3:4 4:1,25 6:7,15 10:15 11:
10,22 12:1 16:14,17 17:18 19:15,
20,23 27:1 6:28,17,25 30:13,16 31:
16,18 32:8 33:18,23 34:5,21 35:15
36:7 38:1 39:25 40:2,15 41:2,9,17
43:16,20,24 45:1 47:7 51:4 55:
15,19,23 56:5,8,13,23 57:3 62:11
63:4 64:12 65:16 67:18 68:2,21,24
69:2,12 73:8,15 75:2,13,17 76:10,
25 77:4,8,11 78:5,9 81:21,25 82:12
83:24 84:5,10,17,22 85:7,11,15,19,
21 86:6,10 87:19
kind 59:16 60:11 83:9
Kitchen 66:9,11,12
knew 21:19 27:22 29:17,22 30:3,
10 36:5 37:6,20 38:6,9,25 41:23
42:3,11 43:3,19 44:1,12 46:24 47:
10 56:25 58:25 62:25 63:13
know 5:10 8:3,5,9,10 15:20 21:1,
12,15 23:14 24:6,9,12 25:23 26:9
28:12,15,22 30:20,21 31:8 32:7
33:8 34:17,24 35:12 36:9,20 37:23
38:5,9,10 39:16 40:3 41:20 42:17
43:25 44:7,11 46:23 47:1,9,13 49:
15 55:1,7 56:18 60:22,24 62:5 63:
10,12,13 64:13,14,18 65:22 66:4,5,
7,16,19,21,22 67:1,10,23 68:4 79:
2,5,12 84:5
knowing 26:12 61:1
knowledge 44:23,24 56:10 62:19
67:5,21,23
knowledgeable 65:9 66:15
known 47:3,5 74:9,13 76:21 78:9
knows 28:8 63:10

L

L-A-R-S-O-N 5:8
language 4:13 80:23
large 17:4
LARSON 2:1 3:8 5:5,7,8 56:16 82:
9 88:17
last 12:19,22 13:2 14:14 35:23 64:
17
later 13:10 20:14 28:14,21,23
Law 2:10,18 4:15 81:22
lawsuit 21:13,19
lawsuits 87:4
lawyer 86:14
lawyers 51:16
leads 42:10
learned 12:7
learning 10:13
learns 28:15
least 8:14 33:13 38:3
leave 82:19 83:12
led 30:2 36:5 37:5,19 42:2 43:2,3
56:24
left 5:22 36:2 38:13,14 57:9,14 71:

1 83:16
legal 21:8,9,10 28:18,19 82:3
legible 23:24
lesion 57:10,11,22 58:8,9
less 29:14
Let 17:3 19:17,21 28:1 33:21 39:
19 48:5,16 59:12,16 68:17 79:21
80:24 86:6
Let's 38:11 62:12 65:18 75:3,14
84:10
letter 4:3,10 35:3,5 41:25 42:2,19,
23 43:3,10 44:11 49:25 57:5 59:5,
8 62:22 68:15,16 69:4 70:16 71:23
72:5,10,11 73:13,16 74:2,6,12 76:
18 77:1,19,23,24 78:2,6,11,14 79:
15 82:8,14,17,18,21 83:1,2,8,13,22
letters 59:24
level 68:4
lied 41:7,10,13,14
Life 15:21 63:21,23
light 40:12
like 4:12,15 5:23 6:19 19:14 22:14
29:25 45:22 66:12 67:22 68:6,15
86:8
likely 21:7 32:6
line 7:7 8:20 32:9 42:22,24
LISA 2:7 88:3
list 20:17
listed 64:1 76:7
Listen 75:21 77:8,11
listing 59:16 60:11
litigation 19:25
litigations 86:20
little 65:17,18
loan 7:16,22 8:3
logs 5:25
long 6:23 9:8 13:24 14:3,8 25:23
37:23 87:10
look 4:12 19:15,21 68:22 80:6 86:
7
looking 10:11 23:4 27:11
looks 4:15
loose-leaf 5:24
lose 63:2
lost 50:6
lumbar 42:8,15
Lymph 38:13 57:14 58:8

M

machine 24:4
made 7:11,11,21,24 19:4 20:15,17
24:4 28:1 30:10 33:7 36:12 46:12,
12 53:1 58:24 62:3 80:2,6,14 81:8
Madison 2:11 9:15 15:23 16:2,4
88:8,20
mail 37:8
main 35:7
make 6:12 18:17 20:13 21:25 45:
16 52:4,13 55:24 58:20
makes 28:5 45:5,9,12 58:14
making 46:3,5,16 71:9
malignancy 48:23 60:18
malignant 11:12,17 37:13 38:8
39:23 42:6,14,18 43:4,7,13 44:1
47:15 57:10,25 58:13,20,24,25 59:
14,20,25 63:1 74:18 76:15
malpractice 87:4
manager 8:22,24,25 66:17 67:14
many 9:19 17:5,15,25
March 86:1
margins 57:13 58:9
mark 31:1,2,4,5,6,7,9 44:15,17 60:
3,4,6
marked 20:5,7 70:1 71:18 72:1,
14,17 73:3 75:4,8
married 64:13,14,15
material 5:24 13:3,5 40:25
materials 4:16,19 5:17,19
matter 2:2
may 5:24 13:10 32:6 41:12 54:25
70:9 87:3
maybe 9:1 24:1 46:9 54:12 79:21
McNEES 2:18
mean 16:23 17:19 19:23 31:5,6,7
32:9 40:3,4 55:15 67:19 70:5 82:2
means 78:12
meant 23:14,16
medical 8:18,20,23 9:4,9,11 10:
13,18 25:13,24 26:3 30:8,9,18,18,
25 33:10,12 34:9 36:4 37:8 38:20
42:6 43:7 44:3,13,21 45:17 46:25
49:13 50:13 51:4 52:7,19 57:25
58:4,6,17 59:3,3,9,10,20 62:2,6,7

63:10,13 64:2,25 65:2 69:16 70:25
74:9,15 76:4,18,21,23 77:2,6,13
78:3,7,10,15,18,23 87:3,4
melanocytic 13:15
melanoma 11:3 12:17,23,24,25
13:1,6,13 23:12,17 24:13 27:16,19,
23 29:13 30:19 31:2,6,15,23,25 32:
7 33:7 34:10,19 37:15 38:14,18,20,
22 39:3 41:24 42:7,14 43:8,13 44:
14,15,20 47:15 57:11 58:1,13 60:3,
6 63:1 74:18 76:15,24
Melli 2:9 88:7
member 26:3 69:16
member's 23:2
memory 17:2 22:10
mention 44:14 49:10 60:18
mentioned 12:15
mentored 15:13
message 5:25 53:23
messages 5:25
met 51:15
metastatic 23:12,17 24:13 27:15,
15,19,23 29:13 38:14
Michael 42:1
microscopic 10:14,21 12:9
microscopically 10:11 47:10
Middle 2:6
might 65:23
Mike 4:4 66:9,10
mind 11:5 16:23 25:8 26:6 31:3,4
43:19 56:24 58:25 66:14
mine 23:19
minimum 8:13
minute 33:19
misplaced 50:6
missed 52:3
missing 6:13 82:24
miswrote 9:1
mole 31:14 32:18,22 33:6 34:18
35:1,4,10,13,20,23 37:13,24 38:8,
16,24 39:20,24 43:4 46:2,4,8,13
48:8,11,19,21 49:17,23 54:10 55:8
58:16,21,24,25 59:14,21,24,25 60:
9 70:3 73:20 76:2 78:19 79:7
moles 10:11,14,21 34:11 36:2
moment 40:7,10
money 68:4
month 17:15 18:2,5
months 13:25 14:4 15:1,2 18:3
50:20
more 7:24 23:24 32:12 47:5,6,9
70:9 83:16,19
mortgage 7:3,8,9,10,12,17,18,20,
22 8:8,12,15 19:1 37:7 39:5 64:19,
20 67:2,6,8,14 79:16 81:1
most 7:23,25,25 21:7 42:6 43:7,12
57:25 65:9
move 62:12 75:3,14 83:25 84:9,
10,11
Mrs 35:4,5,6 62:18 63:19 64:7,11,
16 68:16,18 69:25,25 70:18 71:1,9,
12,15,22 72:5,8 73:13 74:2,8 77:19
80:24 81:1,24 82:15,19,23 83:5,9,
13,16,21 85:25 87:17
Ms 5:5 56:16 82:9
much 68:4
Mutual 2:4 6:21 8:7,10,19 9:4,9,10
13:20 15:17,21 18:10,11,18,23 21:
24 26:15 28:20 29:6 62:14,17 65:
9,13,15,22 66:7,8,20,24 67:1

N

N-A-R-D-I 15:15
name 5:5 49:10 54:6 64:17 66:10
69:21 22:70 3:4,5,12 83:18
names 4:7 66:16
Nancy 2:3 86:19
Nardi 15:13,14,16 18:22
nature 69:22
near 45:8,9,13
neck 36:2 38:14,15
need 7:24 16:8 19:15,24 22:9 52:
13 86:24
needed 24:20
never 12:8 47:24 55:1 56:19 61:8
86:5
nevus 10:24 11:1,2,5,15,20 12:5
13:6,13 32:25
new 8:6 43:23
next 34:4 36:4 37:4,8,8 38:11 41:
5,22 54:22 55:22 56:24
node 38:13,13 57:14 58:8
noncancerous 11:9,11

BRENDA LARSON - 11/01/01 / HALL V. CUMMUTUAL

none 35:19 40:18 74:21 76:4
 nontender 57:14
 normally 58:17
 Nos 3:5
 notable 42:6 43:7,12 57:25
 Notary 2:8 88:3
 notation 19:4 48:5
 note 4:18 34:6,15 35:15 49:7 53:
 24 54:1,3 57:8 62:1
 noted 23:11 33:2 87:1
 notes 22:16 31:14 45:9 46:1,5,7,
 11,17 48:25 49:17,19,22,22 53:23
 56:4
 nothing 40:21 75:11 76:8,12 87:
 21 88:19
 notice 2:7 5:11,13,14,16 88:17
 November 2:12 29:23 36:6 37:20
 39:1 44:25 57:1 88:6,21
 Now 5:10 15:20 17:1 19:11 20:4
 28:23 30:1 36:14 42:16 43:23 70:
 11 82:16 83:3,12 88:15
 nowhere 48:22
 number 4:2,11 36:11 37:16 58:19
 65:21 75:3 82:21 83:18
 numerous 86:20
 NURICK 2:18

O

o'clock 2:13
 oath 3:11
 Object 28:25 30:13 31:18 32:8 33:
 19,19,24 34:6,21 35:15 36:8 38:1
 40:2 41:9,17 55:20 57:3 64:12 73:
 15 84:2,8
 Objection 17:18 28:17 31:16 32:
 11 36:18 39:25 43:16 21 45:1 47:7
 51:14 62:11 63:4,5 75:13 76:10
 77:1 78:5 81:25 83:24 84:11
 objectionable 40:5 68:7
 observation 46:3
 observations 45:12
 observed 46:14
 obtain 9:21 10:2 12:4 47:24 49:4,
 5 50:15 53:8,22 62:9 76:5
 obtained 8:6 33:12,25 35:22 47:
 23 50:17 53:17 55:1
 obtaining 54:14
 occasions 53:18
 occurred 69:7,8 70:21 71:4 74:4,7
 October 4:3 6:25 8:16 9:5 14:9,
 10,18
 off 7:16 12:1,3 20:1,2 64:4 68:13,
 14 81:23
 offered 9:23,25
 offers 8:20
 Office 4:6,11 13:5 24:1,2 37:9 48:
 1,2,25 49:1,22 50:4,4,12 52:23 53:
 8 54:19,23,25 55:13,14 56:4 79:1,4
 offices 16:4
 Oh 26:22 28:21 85:24
 Okay 6:2,11,19 13:9,13 16:4 17:1
 18:4,17 19:13,18,22 22:12,18 28:3
 30:5,17 34:8 38:11 41:4 42:25 56:
 22 59:18 65:19 66:1 69:3,14 70:17
 77:10 85:19,23 86:6 87:19
 one 6:5 8:21 12:6,19 16:11,23,24,
 25 17:13 18:8 22:5,21 23:21 27:10
 29:14 30:7 33:24 39:24 53:24 54:
 21 59:22 60:1,22 61:3 62:5 63:20,
 23 65:25 66:2 67:18 70:9
 one-half 8:14
 ongoing 40:11,25
 Only 11:24 16:10 31:12 35:2 38:
 22 39:12 44:18 58:11 63:22 77:23
 78:18 87:12
 onto 20:23
 open 60:17 82:19 83:12,14,16
 opened 83:8
 operative 62:1
 opinion 71:18
 opposite 11:8,10,17,23,25
 opposites 11:13
 oral 5:13
 order 20:11 86:23
 original 23:21,23
 other 12:11 17:10 18:8,8 32:14,17
 36:20 37:5 42:23 43:1 44:6 47:13,
 17 53:6 54:22 60:10 61:15 68:8
 70:13 73:10,25 77:17 84:14 85:3
 out 5:22 12:7 14:21 16:4 21:4 29:
 17 30:4,11 37:24 39:21 43:11,14,
 15,19 44:25 50:9 53:12 54:15,16,
 18 57:1 59:1 64:19 66:4 70:23 71:

2,6
 outpatient 48:7,17
 outstanding 7:16 8:12
 over 9:8 18:2 36:10 75:2 84:7,20
 85:2
 own 17:8 21:17 22:2 31:14 60:21
 70:24 78:23 83:15

P

p.m 2:13 87:22 88:6
 Page 3:2 54:22
 pages 4:12 54:1,17
 paid 65:11 66:4 82:15 83:3,11
 paper 20:19,21,23 36:12,13
 paragraph 25:24 58:6 79:15
 part 16:15,17,20,21 17:9 25:21 32:
 15 35:23 44:9 47:16 49:21 58:11
 59:21 62:7,13
 particular 8:13 21:11 32:1 40:21
 42:22 49:16 51:6,23
 particularly 40:12
 parties 88:12
 parts 31:5 42:23 67:12
 past 25:13,24 30:18 38:20 42:5
 43:6 45:22,23 57:24 58:4,6,17 59:
 3,9,10,14
 pathologist 45:12 47:3,6,10 52:4,
 8
 pathologists 51:25
 pathology 10:5,9 32:13,18,21 33:
 3,5 35:9,17,19 38:12 44:4 47:2,5
 51:11,23 52:1,5,10,17,18,24 53:1
 54:21 57:10 58:16 60:8 61:25 72:
 15,19,22,25 73:4,22,25 75:10,24
 87:5
 patient 23:16 30:23 31:12,21,24
 32:3,5,6 39:4 42:7,12,13 43:9,10
 45:15,15 46:6,20,25 51:6,10,23 57:
 13,18 58:12,18 59:3,4,6,6,10 84:6
 patient's 38:20 52:5 57:19
 patients 17:5,5
 Patriot 24:3
 pay 7:16 40:25
 payment 7:11,13
 payments 7:24
 payout 7:14,21
 Pease 2:10 88:7
 PEDERSEN 2:15 3:3 4:24 5:2,4,6:
 11 11:24 16:16,19 17:20 19:22 33:
 21 34:3,8 40:8,22 41:4 43:22 55:
 18,21 56:2,6,22 65:19 67:24 68:13
 78:7 82:7 84:1,8,13,19 85:1,9,13,
 18 86:2,8,15,18 87:16,21
 penalties 61:2
 pending 2:5 88:16
 Pennsylvania 2:6,16,19 4:6,9
 people 17:3 66:16 67:20
 pepper 11:25
 per 18:5
 performed 36:9
 performing 40:17
 period 9:8 18:2 24:14 36:10 50:22
 80:10,19 81:4,17 82:6 83:3
 periods 14:11
 person 50:13 62:5 65:24,24 66:6
 69:21 88:11
 personal 37:12,22 38:7 42:5 43:6
 66:16 67:5
 personally 30:21 79:10 87:15,18
 personnel 4:8
 phone 51:5 52:4 62:18,21 82:21
 83:18 86:1
 physician 32:2 50:4,12 57:23 69:
 22 70:10
 physician's 48:2 70:12
 physicians 34:1 47:13,17 49:12
 pick 62:18,21
 piece 20:19,21,23 37:4,8 56:20
 piecemeal 36:8
 pieces 36:11,13
 pigmented 13:17
 pinpoint 12:6
 place 34:9
 plaintiff 2:3,4 88:9
 plaintiff's 86:12 87:13
 please 5:5 69:17 84:23
 point 15:5 21:13 24:18 27:18,22,
 24 28:1 29:19 47:12 50:8 55:12
 67:19 68:8,11
 policies 67:3 68:5
 policy 7:10,14 9:7 26:16,17 53:3
 59:2 61:17 62:16 63:24 79:17,19,
 20 80:4,5,7,11,19,21,23 81:3,5,13

82:5,9,12
 portion 42:19 43:5,6 64:4 79:19,
 20
 portions 75:25
 position 6:20
 Positively 21:20
 possession 61:19
 possibilities 31:12,21
 possibly 24:3 47:14
 practice 8:10
 premiums 65:10 66:3,23 67:2
 preparation 36:25 55:5
 prepare 19:9,19
 prepared 3:6 19:25 20:9,10 21:16
 present 37:14 49:13
 presented 83:6
 president 65:15 66:7,9
 printed 21:4
 prior 8:16,18 9:1,4 14:4 27:22 44:
 18,18 63:1 74:13 87:2
 private 65:1
 problem 22:9 67:19 69:20 70:8
 71:21,23,24 72:4,9 75:21
 problems 71:14 72:11
 procedure 34:12 51:13,15 54:9
 78:24
 procedures 42:8,15
 process 9:6 14:12 16:7,12,15,18,
 20,21,22 17:10,12 32:2,16 36:17
 37:2 49:21 55:12,16,25
 processed 63:15
 produced 4:2,19,21 6:8,10,18
 product 8:13 16:3 19:1
 profession 26:3 69:16
 Professional 2:8 88:23
 promise 85:15
 prompted 29:11
 properly 70:23
 protection 7:4,10 19:1 67:15
 protocol 21:24 26:10,14,22,23
 provide 28:8,11 39:19 47:18 64:2
 82:13,19 83:9,16
 provided 6:6 19:12 40:13,16 42:
 12,13 43:8 46:6 47:23 56:3,12 58:
 17 74:16 86:3
 providers 52:7 87:3
 provides 82:10
 providing 40:25
 provision 79:21,22,25 80:4 81:2
 provisions 79:20
 Public 2:8 88:3
 punitive 68:10,11
 purchased 8:6
 purpose 23:4,6
 pursuant 2:7 88:17
 pursue 10:3
 put 20:23 35:3,5 37:6 55:16 75:19
 putting 24:22
 puzzle 56:21

Q

question 10:16 16:14 25:15,23,25
 30:14 31:1,2,4,5,6,7,9,14,19,22 33:
 7,22,25 34:4,6,10,22 35:23 39:14,
 14 40:3,4 41:12 42:21 43:21,23
 44:15,17 51:18 54:13,14 55:20 60:
 3,4,6 64:22 65:25 66:6 67:10,11,13
 68:9 69:9,9 71:17 73:8 75:21,22
 77:5,9,12 81:20 82:13 84:7
 question's 40:5
 questioning 31:24 32:9
 questions 19:17 36:18 65:21 84:
 14,23,25 85:3,4,8,12,14,17,22
 quote 69:11

R

radiology 9:13,17
 raise 84:1,2,3 85:16
 raising 84:11,18,23
 rate 27:18
 reach 36:16
 read 5:1 57:17 58:5,7 59:5 83:15
 84:20
 reading 10:5,9 78:11
 reads 38:13 39:15
 really 46:9 82:2
 realm 52:9
 reason 23:8,23 27:14 33:9 34:18
 35:7 51:21 64:15 65:2
 recall 13:7 16:10,11 17:2,5 21:21,
 22 24:5 49:19 51:22 53:16
 recalled 50:9 51:13,15

receipt 26:10
 receive 5:11 44:22 52:18 54:21
 72:22 86:1 87:15,16
 received 4:20 22:21,22,23 23:21,
 25 24:2 25:2 26:7 27:24 29:19 37:
 9 44:3,21 47:12,25 52:19,24 72:6,
 18,22 73:1 74:19,20 75:6,9,20 76:
 14 87:18
 receiving 22:25 24:19
 receptive 87:7
 recess 20:3 65:20
 recitation 58:10
 recollect 51:5
 recollection 16:6,8,22 17:9,12,13
 18:7 21:17
 recommended 33:1
 record 4:19 5:6 12:2,3 20:1,2 30:
 1,18,25 33:10 34:7 35:16 37:8,11,
 17,19,22 38:10,11 44:13 45:17 52:
 10 56:17 59:20 62:2 68:13,14 75:
 11 77:6 82:1 84:14 86:3,16 88:14
 recordings 46:22
 records 5:17,18 16:10 17:7 30:8,9
 33:12,13 34:1,9,14 35:17,22 36:4,
 21,23 38:4 44:21,22 45:17 46:20
 47:12,18,18,23,24,25 48:3,7,10,11,
 16,18 22 49:1,4,5,11,13,16 50:1,7,
 13,15 51:3,4,16 52:19 53:8,9,13,
 54:7,9,15,20,23,25 55:4,6,9,13,14
 56:11 60:14 62:7 63:16,17 65:1,3
 70:11 75:25 76:2,4 77:15,16 78:25
 82:24
 recreated 20:14
 redepose 40:23
 reduced 88:13
 refer 22:15 33:16 41:15 42:23 45:
 22 46:2 52:21 59:24 76:6 79:15
 reference 15:7 33:6 58:20,23 74:1
 referenced 34:11
 references 59:13,20
 referral 41:16
 referred 5:24 17:23 19:1,3,4 41:
 19 60:17
 referring 12:21 19:6 22:9 25:14,
 15 46:1 49:12 53:7,23 55:25 56:20
 69:5 70:16 73:12,18 74:5 76:19
 77:25 79:19 82:8 86:3
 reflect 21:6,7
 reflects 78:2
 refresh 22:10
 regard 10:16 25:12 38:19 52:5 58:
 4,5 62:6 71:8
 regarding 4:8,14,16
 Registered 2:8 88:23
 relate 5:17,19 10:21 13:12 38:16
 42:24
 related 31:9 40:10
 relates 10:13 13:6 22:19
 relating 38:24 48:7 65:22 66:24
 relationship 64:10
 relative 88:19
 relevant 54:8,10
 remedied 71:14
 remedy 71:21,23 72:4,11
 remember 16:15 17:1 34:3 51:9,
 10
 removal 46:8 48:8,11,20,21 55:8
 60:9 70:3 73:20 76:1 78:19
 removals 46:17
 removed 30:19 32:19,22 33:6 34:
 11,19 35:10,20,24 36:2 37:24 39:
 20 43:4 46:13 49:17,23 59:21 79:7
 removing 54:10
 repeat 24:22 31:20 54:12
 repeating 57:7
 report 32:13,15,18,21 33:3,5 35:9,
 17,19 38:12,22 39:1 44:4 47:2,5
 51:11,23 52:1,5,17,18,24 53:1 54:
 21 58:16 60:8 61:25 72:15,19,22,
 25 73:2,5,22,25 75:10,24 76:1,8,12
 87:5
 reported 42:15 57:21,23 77:25
 Reporter 2:8 88:11,23
 reporting 4:14,16 58:15
 reports 10:6,9 42:8
 represented 86:18
 represents 24:10
 request 13:11 88:9
 requested 21:10 28:8 78:25
 requesting 51:4
 require 44:9 47:16
 required 64:2
 rescind 80:7,11 82:5

BRENDA LARSON - 11/01/01 / HALL V. CUMMUTUAL

rescission 53:2
 resection 42:7,14 43:5,12 57:24
 58:12
 resections 10:11 58:16
 reserve 40:22 41:2 84:20
 respect 8:11 9:3 10:8,17,18 12:17
 29:6 32:22 53:2 65:9
 response 22:25
 result 63:3 87:3
 results 73:14
 retain 76:5
 reveal 77:18
 revealed 57:10 74:9 76:19,22,24
 77:3,14 78:3,4,8,10,15,16,18,23
 79:3,8
 Review 4:15 9:6 17:15 23:6 32:2
 33:1 52:13,14 70:19 71:5,16 83:7
 87:9
 reviewed 23:2,9 32:15 33:11 38:
 12 44:2 51:16 53:5 55:4 63:17 70:
 11 74:23 86:4
 reviewing 16:12 23:5 31:9 58:15
 87:7
 reviews 45:12
 Rich 14:7,13 15:12
 right 7:18 13:14 14:18 16:19 18:
 16 19:7 26:24 28:6 29:4,20 35:25
 38:22 40:23 43:22 44:16 45:16,24,
 25 48:12 53:18 54:24 55:2,10 56:
 5,8,23 59:17 60:11,14,17 61:9,20
 67:9 71:11 72:12 80:4,10,12,13,17,
 18 81:12,16,16 83:4 84:20
 role 8:22
 routinely 27:7,13
 Ruhly 2:10 88:7

S

said 11:9 18:13 31:11 34:2 37:18
 44:4,23 47:18 49:10 54:16 60:16
 66:4,5 72:20,25 79:6,11 88:8,13,
 14,17,20
 salt 11:24
 same 6:12 7:5,6 11:5 34:15 46:11,
 13,17 64:17 84:6
 say 8:25 11:4 13:2,25 14:4,9 16:
 20 18:4,7 24:1 35:23 43:13 44:2,
 10 47:1 58:11 59:5 74:20 76:18
 78:11,21 80:9,10,13 81:4
 saying 29:2 35:2 41:10 56:18 60:
 19 68:3 70:12 77:22,23 78:14
 says 38:7,18,22 43:12 53:25 54:1
 59:7,9 76:21 77:1 78:6,7 79:10 80:
 1,4,19 81:6,13
 scapular 57:22
 scenario 35:7
 schedule 9:7
 school 9:12,17,19
 second 19:20
 section 4:5 8:23 41:16 58:7 69:21
 70:8 71:25
 see 6:16 19:24 20:15 23:18 59:16
 60:13 68:17 71:13
 seeing 45:15
 seen 19:11 56:19 86:5
 seminar 13:3,5
 seminars 12:14,22 13:12
 sense 17:25
 sent 5:10 53:10 54:17,17
 sentence 44:17 60:4
 September 79:3
 service 30:12,17 37:10
 set 36:18
 sets 6:12
 Sharfman's 34:13 36:1
 she'll 5:1
 sheet 19:17 86:5
 Short 20:3 65:20
 shorthand 88:10
 should 41:12 57:15 70:1,1,2,12,22
 71:6,18,20 72:1,2,4,14,17 73:13
 74:20 75:7 76:6,16
 shouldn't 24:1
 show 30:1 60:15
 showed 60:9 70:19 72:15
 side 85:3
 sign 5:1 84:20
 signature 64:21,23,24 65:1,6
 signed 61:1,1,6,7
 significance 31:1 40:9 49:16
 signing 61:3 64:16
 similar 11:2
 simply 79:22 80:19 81:13
 simultaneously 73:23

Since 6:25 9:10 22:6 32:1 46:1
 single 36:15 63:21 64:5,20
 sit 24:5 35:12 39:16
 sitting 16:11 45:16
 six 13:25 14:4 76:11
 size 57:15
 skin 32:25
 skip 43:1
 slides 45:12 58:16
 small 36:2
 some 4:13,15 6:19 12:11,14 13:4
 15:7 17:25 19:6 20:14 28:22 34:15
 39:10 40:8 46:5 61:21,23 68:8 71:
 1 84:22
 someone 18:18 27:19 66:8,22
 something 11:8 19:11 27:9 32:12
 39:4 45:22 52:2 66:17
 sometime 14:17 78:16
 Sometimes 17:5,6,6
 soon 75:19
 sorry 9:1 10:15 24:22 31:20 33:24
 52:13 54:12 55:23 57:12 59:8 62:
 10 67:1 73:3 81:19
 sort 36:8
 sound 67:22
 speak 50:8,25 81:16
 special 41:19
 specific 12:10,16 16:6,8 17:13,14
 25:23,25 26:12,20 27:14 51:10 52:
 5 66:21
 specifically 12:8,24 16:11 18:19
 26:2 35:17 39:22 49:4,6,8 66:25
 67:3 68:15 70:14 82:21
 speculating 32:10
 speculation 32:10 43:17,18,25
 44:2,9,10 47:16,21
 spell 13:22 15:14 67:16
 spinal 37:12 42:8,15
 spoke 50:12 52:22
 spoken 51:8
 spouse 62:24
 staff 50:3
 standard 26:10,14,22
 starting 6:12
 State 2:9,11 5:5 74:24 80:17 88:1,
 4,8
 stated 32:20 39:22 86:25
 statement 31:5 34:10 60:21,24
 61:3,7,14 79:25 80:2,14,22 81:8
 82:11
 statements 62:1 80:6,20
 States 2:5 59:4,6 79:22,25 80:14
 82:9
 status 85:25
 statutory 4:12
 stay 84:25 85:2
 Stel 4:2
 step 22:14,14
 STEPHEN 2:15
 Steve 27:11 36:7 55:24 63:5 65:16
 67:18 75:14 77:12 81:22 84:18 85:
 8,11 86:15
 still 7:18 11:22 15:18 20:21 82:23
 stipulations 4:22
 stop 75:19
 Street 2:10 88:7
 strike 80:25
 studies 10:4 12:15,16
 stuff 71:1
 submitted 87:10
 subsequently 55:4
 such 64:6
 suffered 23:16
 suggest 82:23
 suggesting 68:1 82:10
 summarize 60:13
 supervisor 13:20,24 14:1,3,6,8,13
 supplement 28:14
 supplementing 28:23
 supported 41:23
 sure 6:12 9:16 11:22 18:17 19:22
 21:18 51:2 52:8 55:21,24 65:19
 surgeon 45:5,8 49:14,23
 surgeon's 49:11
 surgeons 49:17
 surgeons' 49:16
 surgery 37:12,13 38:15 45:5,6,9
 48:4 61:5
 surgical 38:13 42:7,14 43:5,12 48:
 10 54:9 57:13,24 58:8,12 60:14
 76:1
 surgically 57:11
 surprise 40:1 51:12,18

surprised 18:19 21
 suspect 38:14,18,22 39:13
 suspecting 39:2
 suspects 39:4
 suspicion 44:20
 sworn 3:10 88:18

T

take 15:23 40:8 52:1 65:18 86:6
 taken 2:2 12:8 20:3 42:20 48:19
 51:13 65:20 88:5,9,10,16
 talk 19:24 40:18 48:16 51:21
 talking 45:2 52:15 57:19 70:14 77:
 23
 taped 87:2
 taught 62:3,5,14
 technician 10:1,4
 technology 9:13,18 10:13,18
 telephone 5:25 86:4
 tell 28:21 32:21 35:6 39:23 50:3
 56:11 70:18 72:8 78:22 81:24 82:
 14
 telling 69:24,25 70:25 73:5
 term 11:12 13:15 41:13
 Terminology 10:19,20,23
 test 79:23
 testified 3:10 22:20
 testify 88:18
 testimony 88:14
 Thank 68:25
 that's 4:5,24 5:2,8 6:7,9 11:11 14:
 19 15:23,25 16:1,19 18:16 19:8,11
 22:7 26:23 33:7 35:3 36:16,17 38:
 15,15 39:14 40:13 44:18 51:23 54:
 11 56:16 57:18 58:14,22,24 60:20
 61:11 71:9,12,19 73:9 74:25 75:
 21,22 76:25 77:4,19 80:4 82:3,10
 83:15,21 87:19
 there's 6:16 15:7 18:14 25:23 34:
 9 39:12 42:19 44:14,15,17 53:24
 56:14 60:1,2,4 75:11 83:14
 thereafter 88:12
 they've 29:2
 thing 17:14 22:19 83:9
 things 5:22 22:10 28:11,14 61:15
 67:21
 think 6:17 18:13 22:20 23:23 24:
 24 27:2,4,6 33:24 36:16,17 51:8,
 10,22 58:2 63:8 66:2 68:3,7,9 83:5
 those 4:18,19,21 11:12 23:5 25:2
 26:5 33:16 36:13 45:19 46:7,17,22
 47:18 48:7,10,18,22,22 53:13 54:
 23 58:2,9 59:24 61:10,11 62:4,14
 75:12 76:2 77:16 82:25
 though 52:6 54:23 65:5 72:15 82:
 22 83:22
 thought 41:6 54:11 60:19,19
 three 12:22 13:2 23:13,14,17,19
 24:7,9
 three-ring 6:5
 three-year 24:14
 throw 13:8
 time 4:20 8:5,21 9:8 12:21 14:14
 16:24 17:17,19 18:2,3 20:14 22:3
 26:5 7:9 27:24 28:5,15 29:16 30:3,
 7,11 31:8,8 33:11 36:10 38:2,6 41:
 3 44:24 45:8,10,13 46:11,13,17,23
 47:12 48:11,16,19 50:14,17,23 51:
 7 52:12 53:9 57:1 58:23 60:8 70:
 25 78:16 84:15 85:24 87:6
 times 75:3 76:11 84:7
 timing 22:13
 titles 66:19,21
 today 4:21 5:12,23 6:3 24:5 35:12
 39:16 40:19 55:5 56:1 79:13
 told 31:22 39:7,8,11,15 47:3,4,14
 49:3,7 51:17 60:23 61:3,8,10,15
 69:10 71:9,12 80:24 81:1 83:10,21
 Tom 78:3
 Tommy 69:4 70:19,20 74:3 78:17
 86:19
 took 34:15
 top 21:2
 total 8:8,9,12
 towards 10:4
 trained 61:25
 training 10:8,17 13:12 15:5,8,10,
 12 62:13
 traumatically 63:8
 treated 26:2 39:15 47:14,17 69:15
 treating 33:13,16 34:1
 true 11:11 78:20 88:14
 truth 88:18,19,19

truthful 28:4 29:7 75:5
 try 17:3 28:2 54:19 59:12
 trying 17:25 27:7 60:13 67:12 81:
 21
 tumor 12:11 42:3,18 44:1 62:19
 tumors 12:9,10,11
 Two 9:20 15:1,2 18:2 23:12,14,17,
 19 24:6,9,13 25:2 27:2 31:12,21,
 42:8,15 47:25 53:17 67:12 79:18,
 23 80:1,5,14,20 81:6,13
 two-year 80:10,19 81:4,17 82:5
 typed 21:16,18 23:18 24:6
 types 7:1
 typewriting 88:13
 typically 8:11 17:15

U

Um-hum 30:16
 unclear 24:4
 under 3:11 7:10,14,21 20:8 37:14
 59:3 61:2 62:15 63:24 82:15 83:11
 understand 7:10 29:1 46:9 49:3
 56:3,3,14 69:24 81:19
 understanding 7:20 8:2 10:24 11:
 1 12:4 13:15 64:7,10 73:19
 understatement 87:5
 understood 25:19
 underwriter 6:22,24 8:17 15:11,
 17 17:22 18:25 40:16,21
 underwrites 16:2
 underwriting 14:15,17,20 15:3 17:
 16,22 18:1,4
 union 7:15 8:4,7 24:3 25:5 63:25
 unit 41:19 48:18
 United 2:5
 University 9:12,14,17
 Unless 62:9 68:8
 until 52:18 56:9 63:12
 up 16:12 49:20 56:1,9 62:18,21
 71:10
 uphold 62:4
 upon 24:18 26:10 71:5 75:4,24 88:
 9
 upper 58:6
 us 32:21 47:23 51:17 78:22 87:11
 use 41:13 46:10
 used 4:5 66:19 79:25 80:3,15,21
 81:9 88:15
 usual 4:22

V

validity 79:17,23 80:18 81:3,12
 vary 27:20
 verbal 88:9
 vernacular 48:14
 versus 65:10 66:3
 very 18:12,15 22:19 43:24 84:6
 via 24:1
 visit 32:1 36:4 60:2 69:6,8 70:20
 71:4,8 73:12,14,18,19,24 74:1,3,4,
 7,10,13,16 75:10 76:6,8,13,20,
 22,24 77:3,14,15,16,19,25 78:2,4,
 8,11,13,19,23 79:4,9,11
 visited 69:5 70:19
 voice 84:2,2,3,11,18,24 85:16
 void 79:25 80:3,15,21 81:9
 volumes 17:4

W

Wait 19:20 33:19 35:22 80:1
 Walker 2:9 88:7
 WALLACE 2:18
 want 6:11 10:3 14:11,15 19:23 22:
 13 30:5 41:3 43:1 55:24 56:13,17,
 17 67:24 69:24 77:6
 wanted 4:18 18:17
 warranted 25:8,12,22
 wasn't 8:24 18:9 21:18 35:1 47:4
 50:18 63:19,19,24 64:3 73:24
 Waverly 15:21 16:1,3
 way 5:17 18:14 36:17,20,23 40:7
 41:13
 We'll 13:10 29:25 30:7 41:3 86:10
 we're 6:12 25:23 40:18 52:14 68:
 10 77:25
 weeks 56:7,9,12
 weigh 61:25 62:3
 weighed 61:12,13,14,18
 welcome 69:2
 Well 6:15 12:13 16:1 19:15 24:5
 33:12 37:4,14 38:7,18 40:8 41:15
 43:20 44:13 45:5 46:25 51:14 52:

BRENDA LARSON - 11/01/01 / HALL V. CUMMINS MUTUAL

10 54:14,21 55:19 56:2 57:8 59:3
 24 60:17,25 64:1 68:2 70:11 71:9
 72:1 74:19 81:21
what's 10:15,24 13:15 16:10,22
 17:11,18 23:18 37:4,17 41:22 56:
 24 66:10
wherein 2:3
whether 8:5 13:11 24:12 27:21
 31:14,23,24 35:12 39:5,16 41:20
 47:17 49:15 52:2 55:7,9 62:15,25
 78:16 79:12 82:4
who's 45:15 67:6,8
whole 88:19
wife 86:19
will 82:15 83:2,11 85:2
William 34:13
Wisconsin 2:9,12 88:1,4,20
wished 86:20
Within 12:21 13:2 14:14 16:24 17:
 23 18:23 21:24 25:25 28:20 52:8
 66:24 67:4 74:20 79:17 80:19 81:
 3,17 82:5
without 26:12
witness 2:2 3:6,9 27:4 30:15 45:4
 67:22 68:3,19,22,25 69:14 75:16
 77:10 81:18
wondered 31:22
Word 20:15 46:10 81:10,10
words 27:12 58:2,3 83:15
working 20:20
works 15:20,21 16:4 36:17
wouldn't 12:20 39:8 41:13 44:2,9,
 10 47:19 62:24 63:12,13 65:7 66:5
 72:23 78:22 79:4
write 30:24 62:21
writing 31:13 54:3 87:10
Written 5:13,14 20:19 23:18 26:17
 54:4 86:24
wrong 33:10
wrote 30:20,21,22 49:25 54:5

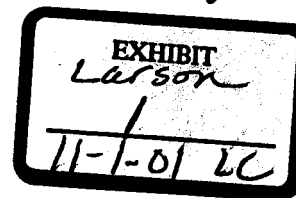
X

X-ray 10:1,4

Y

year 28:23 29:14 53:20
years 9:19,20 12:22 13:2 23:13,
 14,17,19 24:7,9 37:16 79:18,23 80:
 1,5,14,20 81:6,13
yell 84:3
yelled 84:15,16 85:6,9
yesterday 4:20
Yet 77:18

08 3/2881

Tommy B. Hall
32534

11/04/99 MEMBER DECEASED

11/10/99 CU NOTIFIES CUNA Mutual Group OF CLAIM

11/12/99 REQUESTED RECORD PAST 5 YEARS CHARLESWORTH, MD

11/29/99 RECEIVED RECORDS CHARLESWORTH, MD APRIL 1998-NOVEMBER 1999
RECORDS INDICATE 01/22/99 MINOR HISTORY & PHYSICAL EXAM "HE HAS
A HISTORY OF HAVING A MELANOMA ON HIS BACK A NUMBER OF
YEARS AGO." ALSO RECORDS DATED 07/15/99 INDICATE "IN 1993 A MOLE
DEVELOPED ON HIS LEFT SHOULDER BLADE" "IT WAS EXCISED.
PATHOLOGY SHOWED A MALIGNANT MELANOMA."

11/30/99 REQUESTED RECORDS JANUARY 1993-APRIL 1998 FROM DR
CHARLESWORTH, MD

12/06/99 CHARLESWORTH, MD OFFICE CALLED STATING NO OTHER RECORDS TO
GIVE, THE/SUBMITTED ALL RECORDS SENT

12/08/99 FILE TO DR ANSFIELD FOR REVIEW OF INFORMATION RECEIVED FROM
CHARLESWORTH MD.

12/09/99 PER DR ANSFIELD, WE ARE IN NEED OF RECORDS FROM 1993 FORWARD.

12/15/99 CALLED DR CHARLESWORTH OFFICE FOR NAMES OF REFERRING PHYS.
THEY HAVE NO INFORMATION

12/15/99 NOTIFIED CLAIMS OF FILE DELAY

12/15/99 CONTACTED SPOUSE REQUESTING LIST OF TREATING PHYSICIANS FROM
JANUARY 1993-APRIL 1998 BY LETTER

12/28/99 RECEIVED FROM SPOUSE TREATING PHYSICIAN NAMES AND ADDRESSES

12/29/99 WROTE TO ALL PHYSICIANS LISTED BY SPOUSE REQUESTING RECORDS
1993 TO PRESENT

01/06/00 REC'D CALL DR BAKER OFFICE PATIENT NOT SEEN SINCE 1989

01/20/00 REQUEST BY PHONE FROM DRS ENDERS & CASHDOLLAR FOR PRE-
PAYMENT.

01/31/00 DR HURLEY OFFICE CALLED FILE IS LOST. THEY FAXED RECORDS TO
ATTORNEY 04/99, FILE HAS BEEN MISPLACED SINCE.

2/9/00

2/2/00 rec'd cashdollar records
Also reviewed all records w/ Dr. Ansfield

Per Jeff Brown -
Keep copy for future
reference, not filmed

16A

THE CHAMBERSBURG HOSPITAL

PATHOLOGICAL REPORT

Pathologists:

Howard L. Hoffman, M.D.
Constancio A. Ramirez, M.D.

| | | | | |
|-------------------|------|---------|---------|-------------|
| Name of Patient: | Age: | Date: | Doctor: | Acc. No.: |
| HALL II, TOMMY B. | 37 | 4/13/93 | HURLEY | S93-2133 |
| | | | | op / 332103 |

Specimen:

SKIN LESION LEFT BACK

Diagnosis:

EXCISION SKIN LESION LEFT BACK

Gross:

The specimen consists of an elliptical portion of skin measuring 1.5 x 1.0 x 0.7 cm. There is a flat rounded irregularly pigmented central area. The underlying tissue is grossly unremarkable. The margins are marked and the entire structure is processed.

HLH/KK

r-4/13/93

MICROSCOPIC

Section of skin demonstrates the mid portion with groups of nevus cells in the dermis and at the epidermal-dermal junction. A few groups of melanocytic cells are also present in the superficial layer of epidermis. In one level of section, the cells at the epidermal-dermal junction are elongated and dysplastic. A mild lymphocytic infiltration is present in the underlying stroma. The overall microscopic features are regarded as those of a dysplastic nevus. The surgical margins appear free of tumor involvement consistent with complete removal of the lesion. Follow up is recommended in view of the dysplastic changes noted.

INTERPRETATION: DYSPLASTIC NEVUS, SKIN (BACK).

s-1;b-1 88305
CAR/mlw 4/15/93

Examined by

CA Ramirez M.D.
H.L. Hoffman, M.D.
C.A. Ramirez, M.D.

EXHIBIT

Charlesworth-2
1-9-02 PS

PHYSICIAN PROGRESS NOTES

66

Tommy B. Hall

Date

APR 30 1998

WT - 201

BP - ¹²⁰/₇₈ Lt

S-clo pain in Lt leg (calf)

Pushing pushing handle on flat ground to get it started
 broke + stop then "charley horse" but pain has not
 eased + very tight / stiff @ walk. Trail leg hit, no other Rx
 NKA Meds? none

Imp? looks dark red x 2 = bit swollen pre op
 ? melanoma removed handle 1996

5'10" truck driver x 4 years, smoking 1 1/2 MD

O: ⊕ Spasm i mild pushing @ calf

strength intact N-V intact

A: muscle strain @ calf

M: stretching / rest / Analgesic OTC per

Staphs taken 750 06

12-11-98 WT - 209

BP - ¹³⁰/₇₄ Rt

S-clo lump on inside of throat

lump @ lower neck of throat x several weeks
 @ RT @ neck SN. @ cage @ chest cage

no other new lumps (past early x 6 months, not 5 years, there)

O: Firm nodule = 1.5 cm @ lymphatic node as other LN

begin the first chemo (gingivitis) Oht - 6/10

A: 3 rounds

P: ✓ Calf, leg, LPS, Cx

Re x 1 week if not gone

P0906

EXHIBIT

DATE 1-15-99
 AGE 43
 SSN Charlesworth

Charlesworth-3
1-9-02 PS

Tommy Hall
 PATIENT'S NAME

NO lump - base (L) neck x 5 weeks - increased in size

I.P.I. - tender - only when moved around. - none a shellfish or seafood

find 1 cm to 5 cm growth acc to PT. -

P.M.H.

Allergies 0

Medications IRON Med.

Surgery Spinal Sq x 2 1989-1993

Note ER Exc. (1993) Dr. King

on back -

ROS & OTHER C/O

Childbirth Complicated _____ Uncomplicated _____

FAMILY HISTORY

D - Dad - Aunt

C - grandmother (breast)

TB - 0

H - grandmother (CVA)

Physical Examination

EARS

Canals OK

External

NOSE

Septum ML Defl. 0 R

Valves NL Wide L R Closed L R

Turbinates

Discharge Bilat R L

External Dorsal Hump Bridge to L _____ Bridge to R _____

Immunization & Childhood Diseases

Complic _____ Uncomplic _____

Medical Illnesses Anemia

Bleeding Tendencies 0

Hospitalizations (Excl. Sgy.)

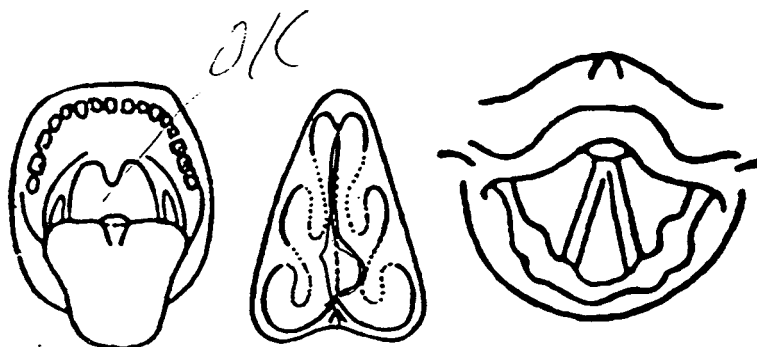
Trauma Neck Trauma x 2 -

HABITS

Tobacco Yes * No 0 Amt 1 pkg. d.

ETOH Yes _____ No * Amt _____

Rinne Left AC BC P.N.O. Motion Valsalva (Motion)
 Right AC BC L _____ R _____ L _____ R _____



02-11-1999 03:12PM FROM JAMES M CHICKLO, M.D. P.C TO

2630677 P.01

THE CHAMBERS HOSPITAL
112 N. Seventh St.
Chambersburg PA 17201

Page 1

COPY

MINOR HISTORY & PHYSICAL EXAMINATION

HALL II, TOMMY B
Patient #: 8304016
Admission Date: 01/22/99
J. M. Chicklo, M.D.

Medical Record #: 332103
Patient Type: 5
DOB: 05/12/55
Patient Rm:

AGE: 43

WORKING DIAGNOSIS: Left cervical node.

FINAL DIAGNOSIS: Same.

COMPLICATIONS: Without.

FAMILY HISTORY: No bleeding tendencies.

PERSONAL HISTORY: Allergies - none. Medications - iron pills. Surgery - spinal surgery and he had a malignant mole excised in 1993 on his back. Medical illnesses - anemia. Hospitalizations - none recently Trauma - nasal fracture times two.

REVIEW OF SYSTEMS: In good health.

DEVELOPMENTAL HISTORY: Normal.

SOCIAL HISTORY: He smokes a pack of cigarettes a day.

HISTORY OF PRESENT ILLNESS: This patient complained of a lump in the left neck for about five weeks. He feels it has increased in size and my exam confirmed tender nodes posterior to the sternocleidomastoid in the left neck. My plan is to excise this node because it has increased in size, it does not appear to be acutely inflammatory, and he has a history of having a melanoma on his back a number of years ago. The risks, rewards and alternative methods of treatment were discussed.

PHYSICAL EXAM. Showed a pleasant man in no distress. Vital signs are normal. HEENT shows a deviated nasal septum. Oral cavity shows a lot of missing teeth. Neck showed a node that is about 2-3 cm just posterior to the sternocleidomastoid on the left and the posterior triangle. No other nodes were palpable. Heart and lungs clear. On his back, there is evidence of a resected lesion but no recurrence in the area.

IMPRESSION: Left neck node.

FALLING SPRING MEDICAL ASSOCIATES

NEW PATIENT INFORMATION RECORD (PLEASE PRINT OR WRITE LEGIBLY)

PATIENT INFORMATION

| | | | |
|---|--|--|---|
| PATIENT'S NAME LAST FIRST MI HALL TOMMY B | AGE 43 | DATE OF BIRTH 5-12-55 | SOCIAL SECURITY NO. 563-82-5959 |
| STREET ADDRESS 517 MT PLEASANT RD | CITY AND STATE FAYETTEVILLE PA | ZIP CODE 17222 | HOME PHONE NO. 717-352-9030 |
| PATIENT'S EMPLOYER CRESSLER TRUCKING INC | MARITAL STATUS: SINGLE <input type="radio"/> MARRIED <input checked="" type="radio"/> WIDOW <input type="radio"/> DIVORCED <input type="radio"/> | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS 1069 SEIBERT AVE | CITY AND STATE SHIPPENSBURG PA | ZIP CODE | |
| IN CASE OF EMERGENCY CONTACT: NAME NANCY HALL | RELATIONSHIP WIFE | PHONE NUMBER 717-352-9030 | |
| SPOUSE'S NAME NANCY M HALL | DATE OF BIRTH 5-28-99 | SOCIAL SECURITY NUMBER 205-44-1196 | |
| SPOUSE'S EMPLOYER | OCCUPATION (INDICATE IF STUDENT) | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS | CITY AND STATE | ZIP CODE | |
| WHO REFERRED YOU TO THIS PRACTICE? DR CHARLES WORTH/DR CHICKO | FAMILY DOCTOR DR CHARLES WORTH | | |

INSURANCE INFORMATION

☐ Medicare (Medical Insurance Only)

Medicare Number _____ Effective Date _____

☒ Blue Shield

If Out of State, Identify _____

Address, If Out of State _____

Name of Insured **Tommy B Hall** Identification No. **0A563825959** Group No. **026824800**☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Medicaid (Medical Assistance)

Recipient Number _____

In order to control our cost of billing, we request that office visits be paid at the time service is rendered. We would rather control our billing costs than be forced to raise our fees.

AUTHORIZATION: I hereby authorize the physician indicated above to furnish information to insurance carriers concerning this illness/accident, and I hereby irrevocably assign to the doctor all payments for medical services rendered. I understand that I am financially responsible for all charges whether or not covered by insurance.

Date **2-17-99** Responsible Party Signature **Tommy B Hall Jr**

HALL, Tommy B.

Referring Physician

in Charleston

Dr. Charles 2/11

thruat ca

Date Referred

WT 210 HT 5'6" BP 130/74 P 92 AGE 43

DATE: 2/17/99

CHIEF COMPLAINT:

lt. CERVICAL NODE

Hypert.

ALLERGIES: NKA

MEDICATIONS: FENICUS - Sulfate. 1 daily

PMH: anemia

~~multiple myeloma~~

malignant node on back 93

ruptured & how disc.

SURGERY: spinal surgery X2. EA + Q3 - ruptured & Hern Disc.
malignant mole excised from back in 1993
excisional biopsy of deep cervical node 1/22/99

SH: OCCUPATION: TRUCK DRIVER / CARRIER - MARRIED / 1 CHILD

SMOKE: 2ppd

ALCOHOL: 0

CAFFEINE: COFFEE - 5 cups per day

FH: 4 MOTHER 62 Healthy
4 FATHER 65 DM, skin cancer
1 BROTHERS 42 Healthy

1 SISTERS Half 17 Healthy

D0177

02/23/2000

66

CHS MEDICAL ONCOLOGY
MICHAEL R. CASHDOLLAR, M.D. KEVIN J. LORENTSEN, M.D.
Medical Oncology/Hematology
120 NORTH SEVENTH STREET
SUITE 201
CHAMBERSBURG, PA 17201-1795
TELEPHONE 717-263-1022

February 17, 1999

James M. Chicklo, M.D.
1039 Wayne Avenue
Chambersburg, PA 17201

RE: TOMMY B. HALL II

Dear Jim:

I had the pleasure of seeing Tommy Hall in medical oncology consultation on Wednesday, 2-17-99. As you are well aware, Mr. Hall demonstrated a left in scapular dermal lesion in 1993. Pathology revealed a malignant melanoma. Lesion was surgically excised with apparent clear surgical margins. In early December of 1988, the patient displayed a nontender left cervical lymph node with apparent increase in size. Incisional biopsy of the lymph node on 1-22-99 demonstrated metastatic malignant melanoma. The patient is otherwise asymptomatic. Of note has been the recent documentation of moderately severe deficiency anemia with an unremarkable GI evaluation including upper GI and barium enema. CBC from 12-11-98 revealed a hemoglobin of 9.5 gram with MCV of 71. Platelet count was appropriately elevated at 426,000. There were function studies at that time that were unremarkable. Barium enema did reveal diverticular disease. A chest x-ray was unremarkable. The patient denies history of apparent blood loss. He now utilizes supplemental iron therapy. He reports recent stable appetite and weight. He denies focal pain or neurologic deficit.

PMH is most notable for the malignant melanoma. Surgical resection in 1993. The patient also reports two lumbar spinal procedures in 1989 and 1993 for herniated disk disease. No drug sensitivity is reported.

SH: The patient is a truck driver. He is married with one child. He smokes typically 1-2 packs per day for over 20 years. He denies ethanol usage.

FH: Relatively benign. The patient's father has displayed mild type II diabetes mellitus. No additional history of melanoma.

PHYSICAL EXAMINATION presently reveals a middle-aged alert white male. Wgt: 210 pounds. Hgt: 5'6". BP: 130/74. R: 16. P: 92 and regular. No peripheral adenopathy or thyromegaly. There is evidence of recent cervical lymph node resection on the left. No sclera icterus. COM's intact. Throat clear. Carotids are full without bruits. No neck vein distention. Lung fields clear. No CVA or cerebral tenderness. Cardiac rhythm is regular. No audible murmur or gallop. Abdomen is moderately obese, soft, nontender. No hepatosplenomegaly. No palpable mass lesions. Good pedal pulses. No peripheral edema. DTR's 1+ and equal. Sensation motor grossly intact.

D0178

HALL II, TOMMY B.

2-17-99

Page 2

IMP: Solitary cervical node metastasis, malignant melanoma, status post nodal excisional biopsy, 1-22-99. History of left scapular dermal malignant melanoma, 1993. Today I have requested immediate CT evaluation of the chest and abdomen to further exclude additional metastatic sites. Documentation of a solitary nodal metastatic site would prompt consideration of Alfa-Interferon therapy utilizing a high dose schedule. The additional recent documentation of significant iron deficiency anemia is also worrisome. I have also requested consideration of GI consultation via Dr. Enders for colonoscopy consideration. I think that it is important to further exclude predominantly a right colonic neoplasm. The patient's wife has undergone a colonoscopic evaluation via Dr. Enders and is familiar with the procedure.

I wish to thank you for allowing me to see and participate in the care of this very interesting patient. The patient does remain at high risk for further metastatic disease.

Respectfully,



Michael R. Cashdollar, M.D.

MRC/djm

C: Dr. Enders
Dr. Charlesworth

SENT FEB 19 1999

D0179

TO: DR. Cashdollar

FROM: CHAMBC HOSPITAL

02-18-99 10:00

6H

SINGLE COPY

Name: HALL II, TOMMY B MR#: 332103 ReqSeq: 732710
 Date Done: 02-18-1999 Read: 02-18-1999 TPO Date: 02-19-1999 Time: 1403
 Ordering Dr: Cashdollar, Michael R. M.D. Transcriptionist: MJG
 Nurs Stat: 80 Pat Class: 3
 Faculty Dr: M.D., LAURIE ABRAMS Date of Birth: 05-12-1955
 Room no.:
 Admitting Diag: CT/METASTATIC CARCINOMA
 Rsn for Exm:
 100CC OMNIPAQUE INJECTED VIA INJECTOR LT 4V BY LAB
 Patient phone: 7173529030 ACCOUNT NO: 533547 *** F/C: ***
 ** FINAL **

HISTORY: METASTATIC CARCINOMA. HISTORY OF MELANOMA.

2/18/99

CT OF THE CHEST AND ABDOMEN: TECHNIQUE: 7 MM NONCONTRAST IMAGES WERE OBTAINED THROUGH THE LIVER. FOLLOWING THE INTRAVENOUS ADMINISTRATION OF 100 CC OF OMNIPAQUE, 7 MM HELICAL SCANS WERE OBTAINED FROM THE THORACIC INLET THROUGH THE ILIAC CRESTS.

FINDINGS: THERE IS NO EVIDENCE OF AXILLARY ADENOPATHY. HOWEVER, RIGHT HILAR ADENOPATHY MEASURES APPROXIMATELY 2 CM TRANSVERSELY BY 3 CM AP. THERE IS NO LEFT HILAR ADENOPATHY. MILD SUBCARINAL ADENOPATHY IS ALSO PRESENT. NO ADDITIONAL MEDIASTINAL ADENOPATHY IS NOTED. THERE IS NO EVIDENCE OF PLEURAL EFFUSION.

A 9 MM NODULE IN THE POSTERIOR SEGMENT OF THE RIGHT UPPER LOBE IS WELL CIRCUMSCRIBED, AND WORRISOME FOR A METASTATIC LESION.

MINIMAL SUBPLEURAL FIBROTIC CHANGE IS NOTED PARTICULARLY IN THE RIGHT MIDDLE LOBE, BUT NO OTHER SUSPICIOUS NODULES ARE DEMONSTRATED. THERE IS A CALCIFIED GRANULOMA IN THE ANTERIOR SEGMENT OF THE RIGHT UPPER LOBE.

MILD BULLOUS CHANGES ARE NOTED IN THE LUNG APICES.

THE LIVER, SPLEEN, PANCREAS, RIGHT ADRENAL GLAND AND KIDNEYS ARE UNREMARKABLE. THE KIDNEYS EXCRETE CONTRAST BILATERALLY.

THERE IS A 3 BY 3.5 CM LEFT ADRENAL MASS. THE MASS MEASURES 38 H.U. PRIOR TO CONTRAST AND 69 H.U. FOLLOWING CONTRAST. THESE VALUES ARE NONSPECIFIC; HOWEVER, THE SIZE OF THE LESION IS SUSPICIOUS FOR MALIGNANCY.

SMALL PARA-AORTIC LYMPH NODES ARE WITHIN NORMAL LIMITS FOR SIZE.

THERE IS A SINGLE LOOP OF SMALL BOWEL IN THE LEFT LOWER QUADRANT DEMONSTRATING A CIRCUMFERENTIALLY THICKENED SMALL BOWEL WALL. THIS COULD REPRESENT INFLAMMATION OR LYMPHOMA. METASTATIC DISEASE FROM

D0149

TO: DR. Cashdollar

FROM: CHAMBG HOSPITAL

02-19-99 13:56 p. 2 of 2

SINGLE COPY

Name: HALL II, TOMMY B MR#: 332103 ReqSeq: 732710
Date Done: 02-18-1999 Read: 02-18-1999 TPD Date: 02-19-1999 Time: 1403

MELANOMA IS A LESS LIKELY CONSIDERATION, BUT IS NOT EXCLUDED.

CONCLUSIONS: 1. 9 MM RIGHT UPPER LOBE NODULE SUSPICIOUS FOR SOLITARY METASTATIC DEPOSIT. PRIMARY MALIGNANCY OR NONCALCIFIED GRANULOMA ARE CONSIDERED LESS LIKELY.

2. 3 BY 2 CM RIGHT HILAR ADENOPATHY. MILD SUBCARINAL ADENOPATHY.

3. 3 BY 3.5 CM LEFT ADRENAL MASS. ADRENAL LESIONS OF THIS SIZE ARE WORRISOME FOR MALIGNANCY. METASTATIC MALIGNANCY WOULD BE MORE LIKELY IN THIS CASE.

4. SINGLE LOOP OF SMALL BOWEL WALL THICKENING IN THE LEFT LOWER QUADRANT. ALTHOUGH THIS COULD REPRESENT AN ISOLATED REGION OF INFLAMMATORY BOWEL DISEASE, THIS AREA IS WORRISOME FOR MALIGNANCY, INCLUDING LYMPHOMA OR METASTATIC DISEASE.

DX: 197.0
64170 61260
HX: 197.0
F/R: P/D

Signed by DR. LAURIE ABRAMS M.D.

61

FALLING SPRING MEDICAL ASSOCIATES**NEW PATIENT INFORMATION RECORD (PLEASE PRINT OR WRITE LEGIBLY)****PATIENT INFORMATION**

| | | | | |
|---|--|--|---------------------------------|--|
| PATIENT'S NAME LAST <u>HALL</u> FIRST <u>TOMMY</u> MI <u>R</u> | | AGE <u>43</u> | DATE OF BIRTH <u>5-12-55</u> | SOCIAL SECURITY NO. <u>563-82-5959</u> |
| STREET ADDRESS <u>517 Mt PLEASANT RD</u> | | CITY AND STATE <u>FAYETTEVILLE PA</u> | | ZIP CODE <u>17222</u> |
| PATIENT'S EMPLOYER <u>CRESSLER TRUCKING INC</u> | | MARITAL STATUS: SINGLE <input type="checkbox"/> <u>MARRIED</u> <input checked="" type="checkbox"/> WIDOW <input type="checkbox"/> DIVORCED <input type="checkbox"/> | | HOME PHONE NO. <u>717-352-9030</u> |
| EMPLOYER'S STREET ADDRESS <u>1069 SEIBERT AVE</u> | | CITY AND STATE <u>SHIPPENSBURG PA</u> | | ZIP CODE <u>17222</u> |
| IN CASE OF EMERGENCY CONTACT: NAME <u>NANCY HALL</u> | | RELATIONSHIP <u>WIFE</u> | | PHONE NUMBER <u>717-352-9030</u> |
| SPOUSE'S NAME <u>NANCY M HALL</u> | | DATE OF BIRTH <u>5-28-55</u> | | SOCIAL SECURITY NUMBER <u>563-82-5959</u> |
| SPOUSE'S EMPLOYER <u>HOUSEWIFE</u> | | OCCUPATION (INDICATE IF STUDENT) <u></u> | | BUSINESS PHONE NO. <u></u> |
| EMPLOYER'S STREET ADDRESS <u></u> | | CITY AND STATE <u></u> | | ZIP CODE <u></u> |
| WHO REFERRED YOU TO THIS PRACTICE? <u>Cashdollar</u> | | FAMILY DOCTOR <u></u> | | |

INSURANCE INFORMATION*Dr. Cashdollar's Records*☐ Medicare (Medical Insurance Only)

Medicare Number _____ Effective Date _____

☒ Blue Shield

If Out of State, Identify _____

Address, If Out of State _____

Name of Insured Tommy B Hall Identification No. PAC 563825959 Group No. 26824000☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Medicaid (Medical Assistance)

Recipient Number _____

In order to control our cost of billing, we request that office visits be paid at the time service is rendered. We would rather control our billing costs than be forced to raise our fees.

AUTHORIZATION: I hereby authorize the physician indicated above to furnish information to insurance carriers concerning this illness/accident, and I hereby irrevocably assign to the doctor all payments for medical services rendered. I understand that I am financially responsible for all charges whether or not covered by insurance.

Date 2-23-99Responsible Party Signature Tommy B Hall

CHAMBERSBURG GASTROENTEROLOGY ASSOCIATES, LTD.

120 N. Seventh Street, Suite 201, Chambersburg, PA 17201-1795 • (717) 263-0629

Board Certified
Internal Medicine/Gastroenterology

JOHN G. ENDERS, M.D. • MARK P. DOBISH, M.D. • WAYNE C. HOOVER, M.D.

HALL, TOMMY B.

2/23/99

SUBJ: 43 yo white male with melanoma in 1993. No with a cervical lymph node showing recurrent melanoma. He developed anemia with hemoglobin of 9.5 and MCV of 71. Upper GI showed GE reflux. Barium enema demonstrated a few diverticuli. CT scan demonstrated adrenal mass and possible peri___ lymph node and a loop of small bowel left lower quadrant seemed thickened. Because of the microcytic anemia further evaluation of colon recommended to rule out neoplastic process. Patient denies hematochezia or alteration in bowel habit. No family history of colon cancer.

OBJ: Patient's physical examination reveals a soft abdomen. Bowel sounds were normal. No masses. Liver and spleen were not enlarged.

ASSESS: Microcytic anemia. Melanoma. Rule out colonic neoplastic process despite negative BE.

RECOMMEND: Proceed with colonoscopy. Discussed the options with the patient. He agrees and will have this scheduled in the near future.

John G. Enders, M.D.

JGE/tml

CC: Dr. Cashdollar

SENT MAR 01 1999

1/1/99

4/5/99
me

4-27-99 left neg. on ans. machine re: hematochezia

5/10/99 Positive Hemoccult K (grossly) 6:10/MT

filled UGE/SDCT 5/18/99 - 11:15 hr
if neg will do EGD

10/25/99 Known sent to Dr. Kelly. Surgery, Surg. - Colon 2nd/2nd
11/15/99 Known sent to Hallinan & Miller - 2nd

D0183

Referring Physician

Castro

Date Referred

WT 214 HT 5'6" BP 140/70 P 80 AGE 43DATE: 2/23/99

CHIEF COMPLAINT:

ALLERGIES: NKDA

MEDICATIONS:

Ferrous Sulfate Tgd

PMH:

Anemia

SURGERY:

Spinal X2 89 + 93 Rupt 4 Her. Disc.

Mal. mole Excised '93

Exc. Bx Deep Cervical Wound 12/2/99

SH: OCCUPATION: Truck Driver

SMOKE: 2ppd

ALCOHOL: NONE

CAFFEINE: Cofee 5 cups a day

Marijuana

1 child:

FH: ↑ MOTHER 62yrs. Healthy

↑ FATHER 65yrs. DM, Skin Ca

| BROTHERS ↑ HEALTHY

| ^{half} SISTERS ↑ healthy

D0184

12/23/2002

THE CHAMBERSBURG HOSPITAL
112 N. Seventh St.
Chambersburg PA 17201

Page 1

COPY

COLONOSCOPY REPORT

HALL II, TOMMY B
Patient #: 8316432
Procedure Date: 03/15/99
J. G. Enders, M.D.

Medical Record #: 332103
Patient Type: 5
DOB: 05/12/55
Patient Rm:

COLONOSCOPIST: J. G. Enders, M.D.

INDICATION FOR PROCEDURE: This is a 43-year-old white male who had melena removed in 1993 and then in February had a cervical node that had malignant melanoma. He was found to have iron deficiency anemia. CT scan of the abdomen revealed small periaortic nodes. An upper GI was unremarkable. To rule out neoplastic process in the colon, colonoscopy was recommended.

PROCEDURE: The indication for the procedure as well as risks and complications were explained in detail to this patient who gave his informed consent. He was prepared with 50 mg of Demerol and 5 mg of Versed intravenously. With the patient on his left side the Olympus single channel video colonoscope was inserted and advanced under direct visualization to the cecum. The ileocecal valve and appendiceal orifice were clearly identified. On slow withdrawal he had minimal submucosal hemorrhage from the bowel prep but no sign of significant pathology. No polyps were seen. No submucosal nodules. No bleeding site. Internal hemorrhoids were noted that were small. The patient tolerated the procedure very well.

IMPRESSION: Essentially normal colonoscopy without site to account for iron deficiency anemia.

RECOMMENDATION: Repeat Hemoccult in a couple of weeks. May need small bowel follow-through if they would be positive.

JGE/dad
D: 03/15/99
T: 03/16/99
cc: Dr. Charlesworth
Dr. Cashdollar

J. G. Enders, M.D.

D0152

COK

The Johns Hopkins Hospital

History #: 317-75-85

Page 1

Patient Name: HALL, TOMMY B

Tape no.: GSP109

ONCOLOGY OUTPATIENT NOTE

SHARFMAN, WILLIAM
July 15, 1999

NEW PATIENT CLINIC VISIT REPORT

REASON FOR CONSULTATION: Mr. Hall is referred for treatment of metastatic melanoma.

HISTORY OF PRESENT ILLNESS: This is a 44-year-old white male who was in his usual state of health until 1996 when he had a number of small moles removed on his left neck that were being irritated by his shirt. In 1993 a mole developed on his left shoulder blade. It developed a bright red rim around it. It was excised. Pathology showed a malignant melanoma. He did well up until last January when he developed a lump in the left neck. A lymph node was excised and found to contain metastatic melanoma. He underwent a staging evaluation and was found to have disease in the knee, intestine and adrenal gland. He was treated with combination chemotherapy that included Platinum, DTIC and BCNU with Interferon. His last chemotherapy was in April. He just stopped the Interferon. Apparently his follow-up scan showed progression in April.

He now is here for further therapy.

Mr. Hall was quite ill as he went through chemotherapy. He is feeling better now since he has stopped the Interferon. His weight is stable. His appetite is picking up. Energy level is improving. He is not driving a truck but he is working full-time in a desk job. He has some occasional shooting pain in the groin and also some intermittent pain in the chest and abdomen.

PAST MEDICAL HISTORY: (1) Lumbar spine surgery times two in 1989 and 1995 with no residual problems. (2) BPH. ✓

MEDICATIONS: Flomax. Tylenol.

SOCIAL HISTORY: He is a truck driver. He has one child. He is married. He does not remember a lot of sunburns or sun exposure. He does not drink alcohol.

FAMILY HISTORY: There is no melanoma in the family. There is a positive family history of diabetes and the breast cancer.

REVIEW OF SYSTEMS: Cardiac is negative. Respiratory is negative. GI is negative.

PHYSICAL EXAMINATION: Temperature, 37.3°C. Blood pressure, 107/65. Pulse, 97. Weight, 80.7 kg.

D0185

The Johns Hopkins Hospital

History #: 317-75-85

Page 2

Patient Name: HALL, TOMMY B

Tape no.: GSP109

ONCOLOGY OUTPATIENT NOTE

SHARFMAN, WILLIAM

July 15, 1999

His head is normocephalic. Pupils are equal, round and reactive to light. There is no papilledema. Neck is supple. The heart has a regular rate and rhythm. The abdomen is soft. There is no organomegaly. There is no rebound. Bowel sounds are active. Lungs are clear. There is no flank tenderness or spinal tenderness. There is no edema and no adenopathy. The motor strength is good. Deep tendon reflexes are +1 and symmetrical. There is no clubbing or cyanosis. There is no ecchymoses or petechiae.

ASSESSMENT: The patient has metastatic melanoma. I talked with Dr. Cashdollar about the situation. The feeling is that he probably has a small bowel metastases, although it has not been proven. His upper endoscopy and colonoscopy were negative. His small bowel follow-up was also negative but shows intermittently heme positive stool. He clearly has metastases in the adrenal glands and one in the kidney.

He has failed combination chemotherapy. He remains a young gentleman with a good performance status at this point. I think his best hope will be for an IL-2 based therapy. The option too would be for high-dose IL-2 given off protocol here or given at the NCI with IL-2 plus vaccine. Initially he did not qualify because of his HLA typing which was a 30 and 32. I spoke with the NCI today and they said that they have a new vaccine protocol which is not HLA restricted. In any case he is going to need to be restaged completely before we can treat him and then we can proceed.

PLAN: (1) Restaging with MRI of the brain. (2) Bone scan. (3) CT scan of the abdomen, chest and pelvis. (4) Once these studies are done we will decide on giving him either high-dose IL-2 here at Hopkins or let him go to NCI for IL-2 plus vaccine. (5) He has some business to take care of and does not want to be treated until the end of July which I think is reasonable.

** DICTATED BUT NOT READ UNLESS SIGNED **

SHARFMAN, WILLIAM

MRG-11 07/19/99

D0186

The Johns Hopkins Hospital

History #: 317-75-85

Page 3

Patient Name: HALL, TOMMY B

Tape no.: GSP109

ONCOLOGY OUTPATIENT NOTE

SHARFMAN, WILLIAM

July 15, 1999

cc: Dr. Michael, Cashdollar
120 North Seventh Street
Suite 201
Chambersburg, PA 17201-1795

Dr. Chiclo
1039 Wayne Avenue
Chambersburg, PA 17201

12/23/2002

D0187

REC'D JUL 28 1999



THE CHAMBERSBURG HOSPITAL

DIAGNOSTIC IMAGING
CONSULTATION REPORT

PAUL R. WILLIAMS, R.T., ADMIN. DIR.

RADIOLOGIST: (CHAMBERSBURG IMAGING ASSOCIATES, P.C.)
ROBERT S. PYATT, M.D., DIRECTOR
PHILIP J. SABAL, M.D.
NITEEN SUKERRAR, M.D.
HENRY CHING, M.D.T. TOE THANE, M.D.
PETER J.W. FANG, M.D.
A.E. LEWANDOWSKI, M.D.
FRANK D'AMELIO, M.D.
CHRISTOPHER DEAN LADD, M.D.HOSPITAL (717) 267-3000
RADIOLOGY 267-7145 OR 267-7145
NUCLEAR MEDICINE 267-7171
CAT SCAN 267-7707
ULTRASOUND 267-7126
BONE DENSITOMETRY 267-7146

RADIOLOGISTS REPORT

FINAL

Name: HALL II, TOMMY B MR#: 332103 ReqSeq: 782371
 Date Done: 07-26-1999 Read: 07-26-1999 TPD Date: 07-27-1999 Time: 0854
 Ordering Dr: Cashdollar, Michael R Transcriptionist: DMS
 Nurs Stat: 56 Pat Class: 3
 Faculty Dr: M.D., FRED T. WANG
 Room no.: Date of Birth: 05-12-1955
 Admitting Diag: CT/MRI/NM/CANCER
 Rsn for Exm:
 CHEST CT

Patient phone: 7173529030 ACCOUNT NO: 618777 *** F/C: 02 ***
 ** FINAL **

HISTORY: MELANOMA

7-26-99

CT CHEST, ABDOMEN AND PELVIS: COMPARISON IS MADE TO PREVIOUS STUDY
 FROM 5-13-99.

CHEST CT: THERE ARE TWO 1 CM. LYMPH NODES IDENTIFIED WITHIN THE LEFT AXILLARY REGION. THERE IS NO SIGNIFICANT CHANGE IN THE SIZE OF THIS AXILLARY LYMPH NODES. A LARGE RIGHT HILAR MASS MEASURING 5 BY 1.5 CM. IS SEEN ON THE AXIAL PLANE. PREVIOUSLY, THIS MASS MEASURED APPROXIMATELY 3 BY 3.5 CM. THERE IS INTERVAL INCREASE IN SIZE. THERE IS ALSO SOME ENCROACHMENT AS WELL AS NARROWING OF THE RIGHT UPPER LOBE BRONCHUS BY THE ENLARGING MASS. NON ENLARGED MEDIASTINAL LYMPH NODES ARE IDENTIFIED. THERE IS A 1 CM. NODULE SEEN WITHIN THE POSTERIOR BASAL SEGMENT OF THE RIGHT UPPER LOBE. THIS NODULE PREVIOUSLY MEASURED APPROXIMATELY 8 MM. THERE ARE ALSO A FEW VERY TINY NODULES IDENTIFIED WITHIN THE ANTERIOR BASAL SEGMENT OF THE RIGHT UPPER LOBE. THESE TINY NODULES MEASURE NO MORE THAN A COUPLE OF MM. ACROSS. THESE TINY NODULES HAVE NOT CHANGED IN SIZE SINCE THE PREVIOUS EXAMINATION. MINIMUM ATELECTATIC CHANGES ARE SEEN WITHIN THE RIGHT CARDIOPHRENIC ANGLE AREA ANTERIORLY. MINIMUM PLEURAL BLEBS ARE SEEN WITHIN THE PERIPHERY OF THE RIGHT UPPER LOBE, UNCHANGED SINCE THE PREVIOUS STUDY.

IMPRESSION: 1. INCREASING SIZE OF THE RIGHT MEDIASTINAL HILAR MASS WHEN COMPARED TO PREVIOUS CT STUDY OF 5-13-99. THIS INCREASING RIGHT HILAR MASS IS ENCROACHING UPON THE RIGHT UPPER LOBE BRONCHUS AND CAUSING SOME NARROWING.

2. INCREASING SIZE OF THE LUNG NODULE AT THE POSTERIOR SEGMENT OF THE RIGHT UPPER LOBE.

ABDOMEN CT THE LIVER, SPLEEN, PANCREAS, RIGHT ADRENAL GLAND AND THE RIGHT KIDNEY HAVE A NORMAL APPEARANCE. THERE IS A LARGE 5.5 CM. LEFT ADRENAL MASS. THIS MASS IS SEEN TO DISPLACE THE LEFT KIDNEY

D0162



THE CHAMBERSBURG HOSPITAL

DIAGNOSTIC IMAGING
CONSULTATION REPORT

RADIOLOGIST: CHAMBERSBURG IMAGING ASSOCIATES, P.C.
ROBERT S. PYATT, M.D., DIRECTOR
PHILIP J. SABRI, M.D.
NATEEN SUKERRAR, M.D.
HENRY CHING, M.D.

Y. TOE THANE, M.D.
PETER J.W. FANG, M.D.
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NUCLEAR MEDICINE 267-7171
CAT SCAN 267-7207
ULTRASOUND 267-7128
BONE DENSITOMETRY 267-7145

PAUL R. WILLIAMS, R.T., ADMIN. DIR.

RADIOLOGISTS REPORT

FINAL

Name: HALL II, TOMMY B. MR#: 332103 ReqSeq: 782371
Date Done: 07-26-1999 Read: 07-26-1999 TPD Date: 07-27-1999 Time: 0854

POSTERIORLY. THIS MASS HAS INCREASED IN SIZE PREVIOUS DIMENSION OF 3.5 CM. ON PREVIOUS CT STUDY OF 5-13-99.

PELVIS CT: WITHIN THE PELVIS, THERE IS A LARGE MASS MEASURING 7 BY 5.5 CM. INVOLVING THE WALL OF THE SIGMOID COLON. THERE IS NARROWING OF THE SIGMOID COLON BY THIS MASS. THIS MASS HAS PROGRESSED SIGNIFICANTLY SINCE THE PREVIOUS CT ABDOMEN FROM FEBRUARY, 1999. NO FREE FLUID IS SEEN WITHIN THE ABDOMEN.

IMPRESSION: 1. INTERVAL ENLARGEMENT OF THE LEFT ADRENAL MASS FROM 3.5 CM. TO THE CURRENT STUDY SIZE OF 5 CM.

2. LARGE 7 BY 5.5 CM. PELVIC MASS INVOLVING THE WALL OF THE SIGMOID COLON. THIS MASS HAS PROGRESSED SIGNIFICANTLY SINCE THE PREVIOUS CT OF THE PELVIS FROM 2-99.

PLEASE SEE DISCUSSION ABOVE.

DX 786.6
61260 64170 62193
EX 293.1
FR PD

Signed by DR. FRED T. WANG, M.D.

✓

7/30/99
Tox to Dr. Shortman
YB

REC'D JUL 28 1999



THE CHAMBERSBURG HOSPITAL

DIAGNOSTIC IMAGING
CONSULTATION REPORT

PAUL R. WILLIAMS, R.T., ADMIN. DIR.

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NUCLEAR MEDICINE 267-7171
CAT SCAN 267-7707
ULTRASOUND 267-7128
BONE DENSITOMETRY 267-7145

RADIOLOGISTS REPORT

FINAL

Name: HALL II, TOMMY B MR#: 332103 ReqSeq: 782406
 Date Done: 07-26-1999 Read: 07-26-1999 TPD Date: 07-27-1999 Time: 0853
 Ordering Dr: Cashdollar, Michael R Transcriptionist: DMS
 Nurs Stat: 56 Pat Class: 3
 Faculty Dr: M.D., FRED T. WANG
 Room no.: Date of Birth: 05-12-1955
 Admitting Diag: CT/MRI/NM/CANCER
 Rsn for Exm:
 NM

Patient phone: 7173529030 ACCOUNT NO: 618777
 ** FINAL **

*** F/C: 02 ***

HISTORY: MELANOMA

7-26-99

TOTAL BODY BONE SCAN: NO PREVIOUS STUDY IS AVAILABLE FOR
 COMPARISON. THE PATIENT WAS GIVEN 22 MILLICURIES TC99M HDP
 INTRAVENOUSLY. UNIFORM UPTAKE IS SEEN WITHIN THE ENTIRE AXIAL
 SKELETAL STRUCTURES. THERE IS A ROUND FOCAL UPTAKE SEEN WITH THE
 REGION OF THE TARSAL METATARSAL JOINT SPACES OF THE LEFT FOOT
 COMPATIBLE WITH AN ARTHRITIC CHANGE. THERE IS ALSO MINIMAL UPTAKE
 SEEN WITHIN THE LOWER RIGHT JAW REFLECTING DENTAL ABNORMALITIES.
 THERE IS NO OTHER FOCAL INCREASE OR DECREASED UPTAKE WITHIN THE AXIAL
 SKELETAL STRUCTURES TO SUGGEST PRESENCE OF MALIGNANCY.

IMPRESSION: NO EVIDENCE OF METASTATIC DISEASE WITHIN THE AXIAL
 SKELETON.

DX 172.9
 68306
 HX 172.9
 FR ND

Signed by DR. FRED T. WANG M.D.

7/30/99
 faxed to Dr. Hoffman
 7/5

D0164

REC'D JUL 28 1999



THE CHAMBERSBURG HOSPITAL

DIAGNOSTIC IMAGING
CONSULTATION REPORT

PAUL R. WILLIAMS, R.T., ADMIN. DIR.

RADIOLOGIST: CHAMBERSBURG IMAGING ASSOCIATES, P.C.I.
ROBERT S. PYATT, M.D., DIRECTOR
PHILIP J. SABIN, M.D.
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NUCLEAR MEDICINE 267-7171
CAT SCAN 267-7707
ULTRASOUND 267-7126
BONE DENSITOMETRY 267-7145

RADIOLOGISTS REPORT

FINAL

Name: HALL II, TOMMY B MR#: 332103 ReqSeq: 782365
 Date Done: 07-26-1999 Read: 07-26-1999 TPD Date: 07-26-1999 Time: 2157
 Ordering Dr: Cashdollar, Michael R. Transcriptionist: DMS
 Nurs Stat: 56 Pat Class: 3
 Faculty Dr: M.D., HENRY CHING
 Room no.: Date of Birth: 05-12-1955
 Admitting Diag: CT/MRI/NM/CANCER
 Rsn for Exm:
 17 ML HPE LOCK LT 4 V BY BD

Patient phone: 7173529030

ACCOUNT NO: 618777

*** F/C: 02 ***

** FINAL **

HISTORY: MELANOMA

7-26-99

MRI OF BRAIN WITHOUT AND WITH GADOLINIUM: TECHNIQUE: T1 SAGITTAL
 IMAGES. T2 AXIAL IMAGES WITHOUT AND WITH FLAIR TECHNIQUE. POST
 GADOLINIUM T1 AXIAL AND CORONAL IMAGES.

FINDINGS: THE BRAIN PARENCHYMA AND VENTRICLES ARE NORMAL IN
 APPEARANCE. NO ABNORMAL ENHANCING LESION, INFARCT, MIDLINE SHIFT OR
 HYDROCEPHALUS IS SEEN. THERE IS MILD MUCOSAL THICKENING IN THE
 INFERIOR ASPECT OF THE RIGHT MAXILLARY SINUS.

IMPRESSION: NO SIGNIFICANT BRAIN ABNORMALITY IS SEEN. NO EVIDENCE
 OF METASTATIC BRAIN DISEASE.

DX 0.00

60553

HX 215.9

FR ND

Signed by DR. HENRY CHING M.D.

7/30/99
 Forwarded to Dr. Shapiro

D0165

CM

02/23/2000

MEDICAL RECORD

INPATIENT RECORD

Admitted on 09-30-99

Discharged on 09-30-99

DICTATOR IDENTIFICATION:

Name: David M. Weinreich, M.D.
 Office Address: Bldg. 10 Rm. 2B42
 Office Telephone: (301) 496-4164

CHIEF COMPLAINT:

The patient is a 44-year-old gentleman with metastatic melanoma.

HISTORY OF PRESENT ILLNESS:

The patient is a 44-year-old gentleman with metastatic melanoma with metastatic sites including his kidney and adrenal gland who was seen by the surgical consult service in August for resection of a pelvic mass. The patient has partially recovered from his exploratory laparotomy and presented to the clinic for evaluation for a vaccine and IL-2 trial for his metastatic disease.

The patient was first diagnosed with melanoma in 1993 and underwent a wide local excision of a shoulder lesion. It subsequently recurred in his neck, which was excised in January of 1999. The patient developed progressive disease in his adrenal, pelvis and kidney and was taken to the operating room in August for resection of his pelvic mass. The patient has also failed a bio-chemotherapy regimen in the early part of 1999.

The patient currently presents extremely lethargic with poor p.o. intake and severe general malaise. Because of his poor functioning status he is, at present, not an interleucin-2 candidate. The patient was admitted from the clinic in order to secure a ride back to Pennsylvania.

DRUG AND THERAPEUTIC HISTORY:

Admitted on 09-30-99
 Discharged on 09-30-99

DISCHARGE SUMMARY
COMBINED WITH HISTORY & PHYSICAL EXAMINATION

Patient Identification

Hall, Tommy B. II 33-20-96 0

Inpatient Record
 NIH-999-2 (5-92)
 P.A. 09-25-0099
 File in Section 1: Summaries, Operations,
 History & Physical Exam

-1-

D0194

ORIGINAL ⁷

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW
AS THE REPRESENTATIVE AND :
ADMINISTRATRIX OF THE ESTATE :
OF TOMMY HALL, DECEASED, HER :
HUSBAND, :
PLAINTIFF :
V : 1:01-CV-1265
CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE SOCIETY, :
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: ERNEST E. CHARLESWORTH, M.D.

TAKEN BY: DEFENDANTS

BEFORE: PAMELA S. SULLIVAN,
REPORTER-NOTARY PUBLIC

DATE: JANUARY 9, 2002, 10:05 A.M.

PLACE: FAIRWAY MEDICAL ASSOCIATES
144 SOUTH 8TH STREET
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

McNEES WALLACE & NURICK, LLC
BY: MICHAEL R. KELLEY, ESQUIRE

FOR - DEFENDANTS

PEDERSEN & PEDERSEN
BY: CATHERINE M. MAHADY-SMITH, ESQUIRE
STEPHEN R. PEDERSEN, ESQUIRE

FOR - PLAINTIFF



Multi-Page™

ERNEST E. CHARLESWORTH, M.D.
JANUARY 9, 2002

Page 2

1 WITNESS

2 NAME EXAMINATION

3 ERNEST E. CHARLESWORTH, M.D.

4 BY: MR. KELLEY 3, 62, 67

5 BY: MS. MAHADY-SMITH 47, 65

6

7

8

9

10 EXHIBITS

11 CHARLESWORTH EXHIBIT NO. PRODUCED & MARKED

12 1 - FACE SHEET, ONE PAGE 16

13 2 - PHYSICIAN PROGRESS NOTES, ONE PAGE 27

14 3 - MEDICAL RECORD, TWO PAGES 39

15 4 - LETTER DATED 2-17-99, TWO PAGES 44

16 5 - 1993 PATHOLOGICAL REPORT, ONE PAGE 46

17 6 - CURRICULUM VITAE, TWO PAGES 68

18

19

20

21

22

23

24

25

Page 3

1 ERNEST E. CHARLESWORTH, M.D., called as a

2 witness, being duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. KELLEY:

5 Q Good morning, Doctor. As I just introduced

6 myself to you, my name is Mike Kelley. I'm a lawyer from

7 Harrisburg, and I'm here to take your deposition today in

8 the case of Nancy Hall and the estate of Tommy Hall versus

9 CUNA Mutual Insurance Company.

10 I'm going to be asking you a series of questions

11 today that are relevant to that action. If at any time

12 during the course of the deposition you don't understand one

13 of my questions, please let me know and I'll try to rephrase

14 it. Okay?

15 A Okay.

16 Q I don't anticipate this being much longer than an

17 hour or an hour and a half. But if you need to take a break

18 for any reason, obviously just let us know and you can do

19 that.

20 A Okay.

21 Q First, what I want to do, Doctor, is just get a

22 little bit of background information on you. Would you give

23 us your full name, please?

24 A Ernest E. Charlesworth.

25 Q And what's your business address here?

Page 4

1 A 144 South 8th Street, Suite 111, Chambersburg,

2 Pennsylvania.

3 Q And what is the name of your practice?

4 A The corporate name is Fairway Medical Associates.

5 Q Are their partners or other members of the

6 practice?

7 A Yes. There are four physicians and one

8 physician's assistant that work as part of the practice

9 here.

10 Q Who are the other physicians who are here?

11 A Samuel Bricker, William Kramer, Daryl White and

12 Dave Cooper is the physician's assistant.

13 Q We're here today to talk about some of the

14 treatment that you had provided to Tommy Hall. Are you

15 familiar with Mr. Hall?

16 A Yes.

17 Q Do you know if any of the other physicians here

18 provided any care or treatment to him?

19 A I'm not aware that they have. I can check the

20 chart and tell you for sure.

21 Q Sure, go ahead. You've got with you here your

22 chart on Mr. Hall. Is that correct?

23 A That's correct. The only entries in the chart

24 for the entire time we saw him are in my writing. So I

25 don't think anybody else ever took care of him in this

Page 5

1 group.

2 Q How long have you been associated with this

3 group, Fairway Medical Associates?

4 A I've been with this practice since 1994. The

5 name of the practice has changed a couple of times, but it's

6 been the same people.

7 Q Do you have a particular medical specialty?

8 A Family practice. I'm board certified,

9 recertified.

10 Q When did you receive your board certification in

11 family practice?

12 A 1984, and my last recertification was about two

13 years or three years ago.

14 Q And the other physicians who are here with you,

15 are they also family practitioners?

16 A Yes.

17 Q Starting after high school, Doctor, can you

18 identify the names of the institutions and degrees that you

19 received, college, medical school, et cetera?

20 A I attended Rensselaer Polytechnic Institution in

21 Troy, New York, and received a B.S. in biomedical

22 engineering.

23 Q What year was that?

24 A That was May of 1981.

25 Q Can you --

Page 10

1 talked about with them?

2 A Not really other than they just asked about some
3 of the notes I made.

4 Q So do you remember anything just in terms of the
5 generalities of what you discussed with them?

6 A Well, they introduced themselves and said that
7 they represented his estate and that there was an issue
8 about insurance covering, I think, a mortgage on a home. I
9 think that's what I recollect and that they just wanted to
10 know what information I had about his past history before
11 his death.

12 Q And what did you tell them about that?

13 A Well, we went over his initial visit to the
14 office and what I had written down. And they wanted to know
15 -- I guess the clarification -- one of the clarifications
16 was what is the information that Tommy gave me and what is
17 the information that I had corroborated, you know, with
18 records or whatever.

19 Q Well, we'll get to that. Anything else you
20 remember either generally or specifically about the
21 conversation that you had with them?

22 A I know that they focused on the cancer which is
23 what caused his death. I know that's what the questions
24 were about.

25 Q Anything else that you recall?

Page 11

1 A Not -- no, not clearly.

2 Q Doctor, either in medical school or in continuing
3 medical education classes, anything of that nature, have you
4 had any training in the creation and retention of patient
5 medical records?

6 A You have that starting in medical school and on
7 through residency training. And actually these days, we get
8 compliance issues and all kinds of CME that are also in
9 reference to medical records.

10 Q So you've had that over the years then?

11 A Yeah.

12 Q Are you familiar with what the requirements are
13 in terms of what you're supposed to do in terms of creating
14 and maintaining patient records?

15 A Yes. One of the big things these days is to make
16 sure you have documentation to verify the level of billing
17 for Medicare guidelines, and that's what the more recent
18 impact has been on.

19 Q Anything else that -- I mean, if you could just
20 explain to me generally what your understanding is of what
21 the requirements are as a doctor?

22 A The reality is -- number one is for medical care.
23 The requirements are that you document enough records that
24 you know what's going on with the patient. I mean that
25 boils down to the basic doctor/patient relationship is that

Page 12

1 you have enough information that you can provide good care
2 for the patient.

3 The secondary issue is what do you require
4 documentation for, for reimbursement and oversight by
5 Medicare and other organizations. And they aren't
6 necessarily the same. But, you know, a doctor's records are
7 supposed to be adequate for him to be able to -- him or her
8 to be able to provide good care for the patient. And that
9 entails getting a history from the patient, a history from
10 family members if they're available, particularly in cases
11 of children, and then documenting physical findings or
12 objective findings, which is a separate part of it.

13 Generally speaking, what is required is that you
14 make an assessment and document what your diagnosis or
15 evaluation of the patient situation is and then document
16 your prescribed treatment or plan.

17 Q It's my understanding that just from a general
18 way of stating it that the records are required to be
19 accurate, legible and to reflect the evaluation and
20 treatment of the patient?

21 A That's correct.

22 Q Is that a fair way of stating it?

23 A Yes.

24 Q Now, do you personally or does the practice here
25 have any written guidelines for the creation and retention

Page 13

1 of medical records?

2 A No, we don't.

3 Q Do you have any -- well, let me -- I'm sure the
4 answer to this question is yes, but let me ask it anyways.
5 Do you have any unwritten or general guidelines that you
6 follow for the types of information that you put into the
7 medical records?

8 A Yes. Let me start by saying that all the
9 physicians here were trained at the same residency program.
10 So we all went through the same instruction on how to
11 evaluate and treat patients. And at the same time, we went
12 through the same training as far as medical records. So
13 maybe that's one of the reasons why there's not a written
14 policy.

15 Secondly, we have several meetings, you know,
16 throughout the year on an ongoing basis discussing the
17 business as well as the patient care that's provided in the
18 office. And we've come up with sheets for the record that
19 help to summarize things.

20 For example, I have in front of me the -- we call
21 it the problem list sheet which includes biographical data
22 on the patient, immunization status and try to record
23 patient past and active problems and surgeries as well as
24 current medications that are prescribed. That is an
25 agreed-upon tracking sheet that unifies everybody's records

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ERNEST E. CHARLESWORTH, M.D.
JANUARY 9, 2002

Page 18

1 That's not my writing. And then there's, you know --
 2 underneath that, there's another doctor's name which is
 3 Dr. Lang written in two lines and ruptured disc, bulging
 4 disc on two different lines. That's my writing.
 5 Q Okay, I'm sorry. Let me take this from the top.
 6 Under Item 1, under Medical Problems, it says -- it looks to
 7 me like it says --
 8 A Cancerous mole removed.
 9 Q -- cancerous mole.
 10 A Yes.
 11 Q Is that your writing?
 12 A No.
 13 Q Do you know whose writing that is?
 14 A No.
 15 Q Is that one of your staff people's writing here?
 16 A We have several staff people. That doesn't look
 17 like what I'm used to seeing. So I don't know. I wonder if
 18 it's not either Nancy or Tommy's writing, the patient or his
 19 wife's writing.
 20 Q And this is -- so I understand it, this is the
 21 document that when the patient arrives at your office for
 22 the first visit, this document is actually provided to the
 23 patient to fill out?
 24 A Sometimes they get it before their appointment,
 25 either they pick it up or in the mail. And sometimes they

Page 19

1 get it when they show up. We ask them to come 15 minutes
 2 prior to their first appointment, and then they can fill it
 3 out in the waiting room.
 4 Q But the point where it says cancerous mole
 5 removed, that is not your writing?
 6 A That's correct.
 7 Q And you don't recognize that as anybody from your
 8 office?
 9 A No, I don't recognize it.
 10 Q Is it safe to say that that would most likely be
 11 from the patient?
 12 MS. MAHADY-SMITH: Objection, calls for
 13 speculation. The doctor has testified he doesn't know whose
 14 handwriting it is.
 15 BY MR. KELLEY:
 16 Q Either Mr. Hall or Mrs. Hall?
 17 A I don't know. I just -- like I said, they have
 18 the sheet first. My staff has it out front, and we have
 19 about ten staff members that can enter into these. And,
 20 actually, some of those have changed since '98. So, no, I
 21 don't keep track of everybody's writing.
 22 Q Now, the writing off to the right then referring
 23 to what it looks like is Dr. Guthrie --
 24 A Yes.
 25 Q -- whose writing is that?

Page 20

1 A I have no idea.
 2 Q That's not yours?
 3 A That's absolutely not mine. It's bad enough, but
 4 it's not.
 5 Q And you don't know if that's someone from your
 6 practice or not who wrote that in there?
 7 A I can't tell you when it was written or who wrote
 8 it.
 9 Q And the next item then under No. 2, it says, Back
 10 surgery.
 11 A Yes.
 12 Q And then under No. 3, it says, Back surgery.
 13 A Correct.
 14 Q Is that your writing?
 15 A No.
 16 Q Is that anybody from your office as far as you
 17 can detect?
 18 A I don't know.
 19 Q Do you recognize that as anybody from your
 20 office?
 21 A I don't recognize it, and I don't even know if
 22 it's the same writing as No. 1, you know.
 23 Q And then over then into the right-hand column
 24 beside No. 2, it has some writing there. And I believe
 25 you've said that that's your writing.

Page 21

1 A Yeah. The writing that has Dr. Lang, ruptured
 2 disc, L5-S1, that's my writing.
 3 Q Is that what it says under Item 2 in the
 4 right-hand column?
 5 A Yes. Dr. Lang, ruptured disc, L5-S1.
 6 Q And then under Item 3 on the right-hand corner,
 7 can you just tell us exactly what that says there?
 8 A Dr. Lang, bulging disc; question mark, L4-L5.
 9 Q And then under Item 4, I believe you said you
 10 wrote that as well?
 11 A Diverticulosis, that's my writing, yeah. These
 12 problem lists are initially presented, but they're updated
 13 as the patients are cared for over time. We try to keep
 14 them as current as we can. So if a patient develops a
 15 problem and has an operation or a hospitalization, we add
 16 that on as time goes by.
 17 Q Now, going back to Item 1 here, Doctor, in the
 18 date category --
 19 A Right.
 20 Q -- what is that date supposed to reflect? Is
 21 that supposed to reflect the time period that the medical
 22 problem surfaced?
 23 A That's supposed to reflect the cancerous mole
 24 removed 1996.
 25 Q Is that your '96 that's written in there?

Page 26

1 When Tommy presented, he and his wife, this was
2 on the note, you know, on the face sheet, cancerous mole.
3 And I said, Well, what kind of cancer? Was it basal cell?
4 squamous cell? melanoma? It makes a huge difference in what
5 to expect and what I should be doing as far as monitoring
6 him for follow-up. And they had no idea. You know, they --
7 Q They had no idea as to the type of cancer?
8 A Yeah. And at the time, there was debate between
9 the two of them whether it was really cancer or not.
10 Q What did that -- do you recall the specifics of
11 what they actually said about that?
12 A Well, let me see what I have written. But I
13 remember that there was a debate between the patient and his
14 wife as to whether it was really cancerous or if it was just
15 a funny-looking mole. You know, one of them said, No, it
16 was just a funny-looking mole. The other one said, No, I
17 think it was cancer. I don't know what kind of cancer it
18 was. They said, I don't know. It really wasn't cancer
19 that's why they don't know.
20 I mean, there was this discussion back and forth
21 between the two of them.
22 Q Can we -- I'm sorry, Doctor. Before you move on
23 beyond that I wanted to ask you, do you recall whether it
24 was Mr. Hall or Mrs. Hall who was saying, I think it was
25 cancer, and which one was saying, no, I think it was just a

Page 27

1 funny-looking mole?
2 A Let me see if I have anything written, and I'll
3 tell you. Okay?
4 Q Sure.
5 A I don't have it specified here in my written
6 records or written notes who said what. But in my mind what
7 sticks out is that Tommy is the one that's saying it was a
8 funny mole and his wife is the one who was saying it was
9 cancer. But I don't have a written note to corroborate
10 that, but that's the way it plays out.
11 I do clearly remember that there was debate
12 between the two of them, number one, whether it was cancer
13 or not. And definitely nobody had any idea what type if it
14 was. And so that's why I definitely recall requesting
15 records to find out was it cancer and what type was it.
16 Q If you would, Doctor, turn to the next -- I'm
17 sorry. I'm not sure if those things are still in there.
18 Yes, they are.
19 MR. KELLEY: Let's mark this next page then as
20 Charlesworth 2.
21 (Physician progress notes, one page, produced and
22 marked Charlesworth Exhibit No. 2.)
23 BY MR. KELLEY:
24 Q Doctor, we've marked as Charlesworth 2 a document
25 that says at the top right, Physician Progress Notes. Do

Page 28

1 you have that in front of you?
2 A Yes, I do.
3 Q And the first date looks like it's stamped in
4 there with a stamp. It says, April 30, 1998. Do you see
5 that?
6 A That's correct.
7 Q Is this your progress note concerning Mr. Hall?
8 A Yes, it is.
9 Q And then towards the bottom of the page, it also
10 has a progress note for December 11, 1998. Correct?
11 A That's correct.
12 Q Doctor, I mean this in the nicest way possible.
13 I don't mean to impugn your handwriting at all. But could
14 you read to us what that note says for April 30th?
15 A I think the first portion of the April 30th is
16 pretty clear because that's in the handwriting of one of my
17 nurses or physician's assistants -- or medical assistants.
18 Q That's where it says weight?
19 A Weight and blood pressure and subjective -- the
20 "S" stands for subjective complaint of pain in the left leg;
21 parentheses, calf, parentheses. That's pretty clear, and
22 then the rest of that is my handwriting.
23 Q Can you --
24 A And what it says is, Pushing pickup truck on flat
25 ground to get it started, took four steps then; quotation

Page 29

1 marks, charley horse; quotation marks. The pain has not
2 eased and very tight; slash, stiff left calf. Tried, KY Hot
3 it looks like, which I think was a brand name of an
4 over-the-counter -- I'm sorry. That's not literal there.
5 I'm sorry. KY Hot is what it looks like. I think that's an
6 over-the-counter preparation that's a gel that they apply
7 for muscle strains.
8 And then it says, the record then goes on, No
9 other Rx, which means treatment. Then I have listed NKA,
10 which stands for no known allergies. Meds none. PMH for
11 past medical history, lumbar disc surgery times two with
12 bilateral sciatica pre-op. Next line is; question mark,
13 melanoma removed back 1996. Next line is social history,
14 truck driver times four years. Smoking, one-and-a-half pack
15 per day.
16 Then there's a blank line. And the next line is
17 objective, which lists the physical findings. Positive
18 spasm with mild tenderness left calf. Strength intact. NV,
19 for neurovascular, intact.
20 The next line is "A" for assessment. Muscle
21 strain left calf. The next line is "P" for plan.
22 Stretching; slash, moist heat -- just the letters MH, for
23 your information -- slash, analgesic over-the-counter -- OTC
24 stands for over-the-counter -- prn. And samples of Relafen,
25 R-E-L-A-F-E-N, 750 milligrams; number, 6, were given to him.

Page 34

1 with the next patient.

2 Whether they never asked for their release to
3 sign or whether they didn't know who to send it to or if it
4 was never sent, I can't tell you where the breakdown was.
5 All I know is we don't have the records.

6 Q In your file regarding Mr. Hall, is there any
7 record in there indicating that they signed a waiver or a
8 release?

9 A No, we don't have that kind of a system.

10 Q That wouldn't have been included in there
11 anyways. Is that right?

12 A Not usually. You know, we send it. Depending on
13 who's working out front, sometimes they'll photocopy the
14 records request. And we try to get them to do that, you
15 know. I mean, when you get somebody to sign a request, sign
16 the -- copy the request, put the date on it so that we know
17 when it was sent. So whenever we have issues like patients
18 say, Why don't you have my records? We can say, Well, we
19 sent it on such and such a date.

20 Like I said, we have ten different employees that
21 work up front. Sometimes it's very busy, and I don't always
22 know if they always do 100 percent of their job they're
23 supposed to do. So in his case, I don't have a record of a
24 records release at that date. So I don't know if it was
25 ever signed or sent.

Page 35

1 Q At any point, have you tried to look into that to
2 see what happened there?

3 A Not that I recall.

4 Q Doctor, was Mr. Hall seeing you that day on April
5 30th of 1998 just because he had a leg problem or was he
6 starting to be one of your -- was he coming to your practice
7 to be a regular patient at your practice?

8 A There's no such thing as a middle-aged male
9 wanting to be a patient at a doctor's practice. But in all
10 seriousness, his wife was a patient of the practice. And
11 our policy is that if there are family members that want to
12 be seen, that we'll take them on as new patients. And I
13 think being a typical male, he came in because he was in
14 pain.

15 But, you know, we assumed he would be our patient
16 whenever he needs us after that.

17 Q So your rationale behind wanting to get his
18 records regarding whatever problem he had on his back wasn't
19 so that you could treat his left leg problem?

20 A No.

21 Q It was because if he came back for other reasons
22 you --

23 A Wanted a complete record.

24 Q -- wanted to have a medical history?

25 A Right. We wanted a complete record if he's going

Page 36

1 to be an ongoing patient, right.

2 Q The next item I'd like you to translate for us,
3 if you could, is under the 12-11-98 progress note, Doctor.

4 A Okay.

5 Q And I can see the weight and the blood pressure
6 there, no problem. And then the "S" being subjective.
7 Right?

8 A Right.

9 Q And then complaints of lump on inside of throat.
10 Is that correct?

11 A Correct, right.

12 Q Can you take us from that point then? Is that
13 your handwriting underneath that?

14 A Yes. Like I said, the nurse or medical assistant
15 generally gets the chief complaint or the reason why they're
16 coming. And that's her writing for the lump on the inside
17 of the throat.

18 After that is what I have written. And that is,
19 Lump left lower neck at least times several weeks. Negative
20 ST, which stands for sore throat. Negative URI symptoms.
21 Negative cough. Negative chest congestion. No other new
22 lumps, and there's a space. And it's, Quit smoking times
23 six months. Weight up to 220 since then.

24 Well, let me just get my original records and see
25 if it looks better.

Page 37

1 Q Go ahead.

2 A That's all right?

3 Q Absolutely.

4 A Oh, what it says is, Quit smoking times six
5 months. Weight up to 220; comma, started again, which means
6 he started smoking again after his weight went up to 220
7 pounds. And then the next line is the objective, Firm
8 nodule, approximately 1.5 centimeters, left supraclavicular.
9 No other LN, which means lymph nodes. Lungs clear. Throat
10 clear except for -- this is in parentheses -- gingivitis.

11 And then, Abdomen without HSM,
12 hepatosplenomegaly. And then assessment is, Questionable
13 mass. Plan is check CBC, ESR, LFT, CXR.

14 Do you want me to tell you what those stand for?

15 Q No.

16 A And then recheck in one month if not gone.

17 Q I want to go back up to the first line then in
18 your handwriting there, Doctor. This is under subjective
19 complaints. Right?

20 A Right.

21 Q So this is information that would be coming from
22 the patient?

23 A That's correct.

24 Q And it mentions about a lump on the throat. Is
25 that right?

Page 42

1 you were making the referral that you would have had the
2 conversation with Dr. Chicklo?

3 A Yes. That's what I'm saying. I told him that's
4 what my concerns were that we didn't have evidence -- I
5 think we had a chest x-ray. Let me see. Anyway, we had a
6 chest x-ray at that time too. But the upper GI didn't give
7 me a cause for his node.

8 And I wanted him to do a thorough evaluation for
9 head and neck cancer. So I wanted to make sure he knew what
10 I was concerned about.

11 Q Do you recall if you provided any history to Dr.
12 Chicklo about any previous cancerous conditions?

13 A I don't remember giving him any other history
14 other than, like I said, what I was telling you that he had
15 a mass; that he was a heavy smoker; he's anemic; the GI was
16 negative; that he didn't have anything in his chest to pin
17 it on. So I was really concerned about a head and neck
18 malignancy.

19 Q Did you give him any history at all as much as
20 you can recall about any problem with a mole on his back?

21 A I don't know whether I did or not.

22 Q There's nothing in your notes that would reflect
23 that information and no letter to Dr. Chicklo or anything
24 like that?

25 A No, that's what I said. It was a phone

Page 43

1 conversation, and I wanted to convey what my concerns were.

2 Q So Charlesworth 3, we're actually going to end up
3 making Chicklo 1 then, I presume, since that's not your
4 record.

5 Any other conversations that you had with Dr.
6 Chicklo regarding Tommy Hall that you can recall?

7 A After he had seen him, I think he had given me a
8 call to tell me that he didn't see any evidence of a head
9 and neck cancer. But his concern too was that, you know,
10 this was a malignant mass. So he wanted to talk to me
11 about, you know, referral for a biopsy of the mass.

12 Q Do you know Dr. Michael Cashdollar?

13 A Yes.

14 Q Go to the -- there's a letter in there dated
15 February 17, 1999, Doctor, in that packet of materials. It
16 appears to be a letter from Dr. Cashdollar --

17 A To Dr. Chicklo.

18 Q -- to Dr. Chicklo dated February 17, 1999. And I
19 believe on the second page there it indicates that you're
20 one of the people who received a copy of it?

21 A Yes.

22 Q Do you have any recollection of receiving this
23 letter?

24 A Yes.

25 Q When you receive letters like this regarding, you

Page 44

1 know, follow-up on a patient of yours, do you review them?

2 A Yeah, I read them before they're filed in the
3 chart.

4 MR. KELLEY: Okay. Now, on this document of
5 February 17, '99 -- why don't we mark this as Charlesworth
6 4?

7 (Letter dated 2-17-99, two pages, produced and
8 marked Charlesworth Exhibit No. 4.)

9 BY MR. KELLEY:

10 Q In this letter, Doctor, in the very first
11 paragraph, second line, it says, As you are well aware --
12 and this is to Dr. Chicklo -- Mr. Hall demonstrated a left
13 in scapular dermal lesion in 1993. Pathology revealed a
14 malignant melanoma.

15 Further down about the middle point of that page,
16 under PMH, which is generally accepted shorthand for patient
17 medical history. Is that right?

18 A Past medical history.

19 Q Past medical history is most notable for the
20 malignant melanoma. Surgical resection in 1993.

21 A Right.

22 Q And then on the second page of that document,
23 second line there, it says, History of left scapular dermal
24 malignant melanoma, 1993.

25 A Right.

Page 45

1 Q At the time you reviewed this letter, did you
2 have any conversations with either Doctors Chicklo or
3 Cashdollar regarding these statements in here about a
4 melanoma, a malignant melanoma, back in 1993?

5 A Dr. Chicklo, like I said, we talked about doing a
6 biopsy. You know, since he's a head and neck surgeon, he
7 did it himself to find out what was going on. And after he
8 got the path report, he called me back, you know, to let me
9 know about the path report.

10 Q You're talking about the path report on the --

11 A For the neck mass.

12 Q For the neck mass.

13 A Which showed a melanoma. And that's when he
14 said, Well, jeez, this guy had to have had a melanoma, you
15 know, years ago. Could it be from that? The question was,
16 Could it be from that or does he have a new one?

17 So we said, well, obviously he needs to go see
18 the oncologist at that point about further treatment. And
19 that's the first time that I became aware that he definitely
20 had a melanoma.

21 Q You're saying that time was somewhere in February
22 of '99?

23 A Well, yes, roughly when Dr. Chicklo -- it had to
24 be in that January/February time frame.

25 Q So it may have even been prior to the date this

Page 50

1 discussion, what was that mole, if you had the pathology
2 report, you wouldn't rely on any of those things. You'd
3 look at the pathology report yourself, as a physician, and
4 see what the pathologist said. Correct?

5 A Correct. Because particularly for melanoma, it's
6 purely a pathological diagnosis. It's done on stages based
7 on the depth of penetration of the tumor. I excise
8 melanomas myself in the office. And depending on the stage,
9 that's all the treatment you ever need. You're cured. But
10 if the depth of penetration is a certain level, you need
11 wide excision, you need lymph node exploration and chances
12 of recurrence are far greater.

13 Q And, Doctor, do you still have the pathology
14 report that was given to you as an exhibit from the 1993
15 mole removal?

16 A Yes.

17 Q That is not a pathology report that indicates as
18 its impression, malignant melanoma, is it?

19 A No.

20 Q And that would have been the report that you
21 would have -- if they had sent it, that would have been
22 accessed at that time?

23 A I don't know because he told me 1996. This says
24 1939. You know, there's a little discrepancy there. So I
25 don't know if this was the only time he ever had a mole

Page 51

1 removed or not.

2 Q Well, let me ask you this: Does it appear that
3 the physician in that case was Dr. Hurley? Do you know Dr.
4 Hurley?

5 A Yes, I know Dr. Hurley.

6 Q Under doctor. Here, under doctor.

7 A Yes, I'm sorry. That's what I was looking for,
8 the doctor that sent the specimen. And that was Dr. Hurley.
9 That's correct.

10 Q Do you recall whether or not he was partners with
11 Dr. Guthrie?

12 A Oh, yes, definitely.

13 Q Is it fair to say, Doctor, that you would have
14 not rendered treatment or recorded as the diagnosis melanoma
15 or cancer without first seeing this pathology report
16 yourself?

17 A If I saw this pathology report, I would not
18 record a diagnosis of cancer.

19 Q Has anyone up until this date, including Mr.
20 Kelley here today, ever showed you any document from any
21 other physician that indicates that Mr. Hall had been
22 diagnosed with cancer prior to the 1999 events attendant to
23 the lump in his neck?

24 A I've never seen a pathology report that shows
25 that.

Page 52

1 Q Now, have you seen -- other than the documents
2 that are in this group right now is what you're referring
3 to?

4 A Yeah, I'm just saying Dr. Cashdollar's letter
5 refers to a pathology report. But I've never seen it.

6 Q And let me just address Dr. Cashdollar's letter.
7 First of all, if you take a look at that exhibit, does it
8 actually say pathology report or does it say pathology
9 revealed malignant melanoma?

10 A Pathology revealed.

11 Q So, now, you don't know as you sit here today --
12 and we can only find out what you know factually. And we're
13 taking Dr. Cashdollar's deposition. But you don't know
14 whether Dr. Cashdollar is referring to a report or to an
15 actual re-review of the slides himself attendant to his care
16 of Mr. Hall. Is that correct?

17 A I'm not sure what he's referring to.

18 Q And you don't even know what pathology report
19 he's referring to. But you know that the one that he might
20 be referring to, you know that the one that we have here
21 does not diagnose malignant melanoma. Correct?

22 A Right, it's a difficult diagnosis.

23 Q So let me rephrase that question. To date, no
24 one has shown you any records from prior to December of 1998
25 that indicate a diagnosis of melanoma or cancer by any of

Page 53

1 Tommy Bob's physicians. Is that correct?

2 A I have no pathology reports that indicate cancer
3 until he had the metastatic lymph nodes.

4 Q Well, and that's another question I have here.
5 You explained to Mr. Kelley what you recalled of the
6 conversation with Dr. Chicklo. As I recall the pathology
7 report from the lymph node -- and it's probably in your
8 records, I would think, if you need to access it. Didn't
9 the pathologist at that time indicate that this was not the
10 primary lesion, that it was indeed metastatic melanoma?

11 A Yes. The lymph node from the supraclavicular
12 area was a metastatic lesion on the initial path.

13 Q So that you as physicians, you and Dr. Chicklo,
14 then would educatedly conclude that it had to come from some
15 other source. Correct?

16 A Yes.

17 Q It spread from some other source. Is that
18 correct?

19 A Yes.

20 Q When Mr. Kelley asked you that with regard to
21 medical records there's a requirement to be accurate and
22 complete and legible, do you recall those questions?

23 A Yes.

24 Q That's the goal. Is that right?

25 A Yes.

Page 58

1 intake sheet or correspondence? You would get a pathology
 2 report in order to outline a plan or begin a treatment plan?
 3 A If I received a letter like Dr. Cashdollar had
 4 written from Dr. Cashdollar or Dr. Hurley or Dr. Chicklo or
 5 any of the people I know that I trust and they said that
 6 this patient had cancer, even without the pathology report,
 7 I would treat that patient as if they had cancer or a
 8 management plan or a follow-up plan based on that.
 9 Q And I tell you this because in Dr. Cashdollar's
 10 letter to you he indicates in an affirmative way that he has
 11 looked at the pathology. Correct?
 12 A Right. And that's his specialty, and I trust his
 13 expertise. Likewise, if Dr. Hurley had given me a letter
 14 that said that this patient had a cancer, I would -- even if
 15 he didn't send the path report, which they normally do, I
 16 would still assume that he had it.
 17 Q Because you're presuming that he's reviewed the
 18 pathology?
 19 A Right.
 20 Q It's based on the pathology report?
 21 A Right.
 22 Q And if Dr. Hurley had sent you this report that
 23 has been marked as Exhibit No. 5, you've already told us
 24 that that would have been viewed as a nonmalignancy.
 25 Correct?

Page 59

1 A If I would have gotten that report, I would have
 2 -- it depends what the letter would say with it. But I
 3 would call and ask him, Where is the report on the cancer?
 4 Q What do you mean, Where is the report on the
 5 cancer?
 6 A If he sent me a letter that said he had cancer
 7 and sent me this report, I'd ask him, Where is the report
 8 that shows he has cancer?
 9 Q Because this does not? The pathology report does
 10 not?
 11 A Yes.
 12 Q Since you never received the pathology report
 13 from the mole excision in the '90s -- whether it was '93 or
 14 '96, you never received the report -- in terms of your
 15 records and your conclusions you never concluded that Mr.
 16 Hall had cancer in either '93 or '96 because you never saw
 17 the reports?
 18 A I had no conclusive evidence of that.
 19 Q And your records cannot be viewed as conclusive
 20 evidence of that because the pathology report is the
 21 conclusive evidence. Correct?
 22 A Right. Just to clarify, you know, you're asking
 23 me about whether I get records or not. Once the diagnosis
 24 was made that he had metastatic melanoma -- it's a terrible
 25 diagnosis. And at that point, the primary is not as

Page 60

1 important to the treatment as the treatment.
 2 Q Right.
 3 A So I mean, once that was made, there was no
 4 reason for me to pursue digging out all the records. I
 5 mean, you're asking me why it may have fallen through. You
 6 know, once you establish it's a metastatic case, the primary
 7 is no longer important, I mean, as far as treatment plans
 8 are concerned.
 9 Q Right, I understand. And that's the question I
 10 was going to ask you is that the group of physicians --
 11 yourself, Dr. Chicklo, Dr. Charlesworth -- you were dealing
 12 with an acute life-threatening situation for Mr. Hall. And
 13 that's what you were focused on and what you were about the
 14 business of dealing with. Correct?
 15 A Right. And I'm saying at that point when you
 16 have metastatic melanoma, you know, that's one treatment
 17 path and that's it.
 18 Q From what you've told us here today, Doctor,
 19 during the deposition, if the representatives from the
 20 insurance company had contacted you when they were making a
 21 decision to deny benefits or to rescind the policy, would
 22 you have told them the same thing that you have told us
 23 today?
 24 A What's here is what's here. You know, what I say
 25 today is what I would have said three years ago, four years

Page 61

1 ago -- well, not four years ago -- three years ago, two
 2 years ago.
 3 Q Did you continue to see Mr. Hall until the time
 4 of his death?
 5 A Periodically.
 6 MS. MAHADY-SMITH: Let me just consult with Steve
 7 for one minute. We'll take a two-minute break, but I think
 8 we may be finished.
 9 (A break was taken.)
 10 BY MS. MAHADY-SMITH:
 11 Q Dr. Charlesworth, as you sit here today, have you
 12 received any medical record from any physician from 1993
 13 through December of '98 that reflects in the medical record
 14 a diagnosis or a treatment of cancer in Mr. Hall?
 15 A During that time period, you mean?
 16 Q Up until that visit, that December 11th, 1998,
 17 visit.
 18 A Just the references in Dr. Cashdollar's letter
 19 here.
 20 Q That's in 1999. Correct?
 21 A Yeah, in 1999, correct. I don't have any other
 22 records or reference prior to December of '98 of any
 23 definitive treatment for a cancer or a diagnosis.
 24 Q Or a diagnosis. And Mr. Kelley hasn't shown you
 25 in his packet of records any record from any medical

Page 66

1 questioning?

2 A Yes. It's determined on how you ask it. If you
3 ask me if he called me in December of '98, that's one
4 answer. If you ask me in March of '99, it's a different
5 answer because I had different records in my possession.

6 Q If they had asked you based on your recollection
7 of the conversation with Mr. Hall, as you told us earlier
8 today in your deposition -- on April 30th, '98, if they had
9 asked you, Did Mr. Hall have an understanding that he had
10 cancer in 1993? Your answer would have been no?

11 A It would have been maybe. But Mr. Hall, it would
12 have been he doesn't think so.

13 Q So that his recollection was just a funny-looking
14 mole?

15 A Right.

16 Q And the information that you would have given in
17 1999 was based on additional information that became
18 available after the diagnosis of metastatic cancer.
19 Correct?

20 A Correct.

21 Q And the insurance company and their
22 representatives had a document which you have told us that
23 you did not have, which is the 1993 pathology report that
24 was attendant to the excision of the mole. That report if
25 you read it, if you had it in your hand and they asked you,

Page 67

1 you would have told them, That does not reflect malignant
2 melanoma. Correct?

3 MR. KELLEY: Objection, calls for speculation.

4 BY MS. MAHADY-SMITH:

5 Q If you had the 1993 report in your hand, the
6 report itself is not a reflection of a finding of malignant
7 melanoma?

8 A This report by itself, no.

9 Q So that if Dr. Cashdollar's letter -- and we
10 haven't deposed him yet -- is a reference to a pathology
11 report, it's not this pathology report. Correct?

12 A Knowing Dr. Cashdollar, no, it wouldn't be that
13 report.

14 MS. MAHADY-SMITH: That's all the questions I
15 have. Thank you, Dr. Charlesworth.

16 MR. KELLEY: That's it. Thank you, sir.

17 (Discussion held off the record.)

18 MR. KELLEY: Dr. Charlesworth has been kind
19 enough to provide us with a current curriculum vitae.

20 EXAMINATION

21 BY MR. KELLEY:

22 Q It is not up to date. Is that right, Doctor?

23 A Yes, it's at least eight years old.

24 Q And if you've got a more recent one, if we could
25 get a copy of that?

Page 68

1 A I'll provide that for you.

2 MR. KELLEY: And why don't you mark this one as
3 part of the record and call it Charlesworth 6?

4 (Curriculum vitae, two pages, produced and marked
5 Charlesworth Exhibit No. 6.)

6 MR. PEDERSEN: I would request that if you get a
7 copy of an updated one that you send a copy to us.

8 (Whereupon, the deposition was concluded at 11:47
9 a.m.)

Page 69

1 COUNTY OF DAUPHIN :
SS

2 COMMONWEALTH OF PENNSYLVANIA :

3
4 I, Pamela S. Sullivan, a Notary Public, authorized to
5 administer oaths within and for the Commonwealth of
6 Pennsylvania, do hereby certify that the foregoing is the
7 testimony of Ernest E. Charlesworth, M.D.

8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.

13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.

15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.

19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.

22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 9th day of January, 2002.

24 Pamela S. Sullivan

25 Reporter-Notary Public

1 COUNTY OF DAUPHIN :
2 COMMONWEALTH OF PENNSYLVANIA : SS

3
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8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.

13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.

15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.

19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.

22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 9th day of January, 2002.

24 NOTARIAL SEAL
PAMELA S. SULLIVAN, Notary Public
Swatara Twp., Dauphin County
25 My Commission Expires Jan. 31, 2005

Pamela S. Sullivan
Pamela S. Sullivan
Reporter-Notary Public

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'90s - basal

ERNEST E. CHARLESWORTH, M.D.

| | | | | | | | | | | | |
|-----------------------------|--|--|-------------------------------------|--|--|-------------------------------|--|--|--------------------------------|--|--|
| -*- | | | 1:01-CV-1265 [1] 1:10 | | | Abdomen [1] 37:11 | | | anticipate [1] 3:16 | | |
| '90s [1] 59:13 | | | -2- | | | abilities [1] 22:18 | | | Anyway [1] 42:5 | | |
| '93 [4] 46:17 46:19 | | | 2 [7] 2:13 20:9 | | | able [4] 8:11 12:7 | | | anyways [2] 13:4 | | |
| 59:13 59:16 | | | 20:24 21:3 27:20 | | | 12:8 65:11 | | | 34:11 | | |
| '96 [5] 21:25 32:1 | | | 27:22 27:24 | | | abnormal [1] 41:11 | | | apologize [1] 39:6 | | |
| 32:21 59:14 59:16 | | | 2-17-99 [2] 2:15 | | | absolutely [6] 20:3 | | | apparent [1] 55:11 | | |
| '98 [8] 19:20 49:25 | | | 44:7 | | | 22:1 22:17 37:3 | | | appear [1] 51:2 | | |
| 54:16 61:13 61:22 | | | 2001 [3] 9:18 9:19 | | | 39:1 49:15 | | | APPEARANCES [1] 1:23 | | |
| 62:2 66:3 66:8 | | | 39:11 | | | accepted [1] 44:16 | | | applicable [1] 17:12 | | |
| '99 [3] 44:5 45:22 | | | 2002 [2] 1:19 69:23 | | | access [1] 53:8 | | | apply [1] 29:6 | | |
| 66:4 | | | 220 [3] 36:23 37:5 | | | accessed [1] 50:22 | | | appointment [3] 18:24 | | |
| -1- | | | 37:6 | | | accurate [11] 7:1 | | | 19:2 56:3 | | |
| 1 [13] 2:12 16:7 | | | 27 [1] 2:13 | | | 12:19 22:2 22:8 | | | approach [1] 65:3 | | |
| 16:9 16:12 17:14 | | | -3- | | | 23:19 53:21 54:9 | | | April [10] 16:12 22:13 | | |
| 18:6 20:22 21:17 | | | 3 [6] 2:4 2:14 | | | 54:11 54:13 56:24 | | | 28:4 28:14 28:15 | | |
| 43:3 55:19 55:24 | | | 20:12 21:6 39:19 | | | 64:15 | | | 30:3 35:4 49:25 | | |
| 55:25 64:2 | | | 43:2 | | | accurately [2] 23:21 | | | 64:24 66:8 | | |
| 1-15-99 [2] 39:15 | | | 30 [2] 16:12 28:4 | | | action [3] 1:3 3:11 | | | area [4] 22:21 41:19 | | |
| 39:23 | | | 30th [6] 6:18 28:14 | | | 69:18 | | | 53:12 65:5 | | |
| 1-22-99 [1] 32:9 | | | 28:15 30:3 35:5 | | | active [1] 13:23 | | | arrive [1] 22:3 | | |
| 1.5 [1] 37:8 | | | 66:8 | | | actual [2] 52:15 65:3 | | | arrives [2] 18:21 22:3 | | |
| 100 [1] 34:22 | | | 39 [1] 2:14 | | | acute [2] 25:2 60:12 | | | art [1] 38:7 | | |
| 10:05 [1] 1:19 | | | -4- | | | add [2] 17:10 21:15 | | | asks [1] 15:25 | | |
| 11 [1] 28:10 | | | 4 [5] 2:15 17:17 | | | added [1] 22:9 | | | assessment [3] 12:14 | | |
| 111 [1] 4:1 | | | 21:9 44:6 44:8 | | | additional [1] 66:17 | | | 29:20 37:12 | | |
| 11:47 [1] 68:8 | | | 4-30 [1] 54:16 | | | address [4] 3:25 23:5 | | | assist [1] 22:21 | | |
| 11th [2] 38:20 61:16 | | | 44 [1] 2:15 | | | 25:13 52:6 | | | assistant [4] 4:8 | | |
| 12-11-98 [3] 36:3 | | | 46 [1] 2:16 | | | addressed [1] 32:19 | | | 4:12 23:7 36:14 | | |
| 41:2 54:23 | | | 47 [1] 2:5 | | | adequate [1] 12:7 | | | assistants [2] 28:17 | | |
| 12-89 [1] 17:20 | | | -5- | | | administer [1] 69:5 | | | 28:17 | | |
| 144 [2] 1:21 4:1 | | | 5 [4] 2:16 46:23 | | | ADMINISTRATRIX [1] 1:5 | | | associated [2] 5:2 | | |
| 15 [1] 19:1 | | | 46:25 58:23 | | | affect [2] 24:2 24:4 | | | 6:21 | | |
| 16 [1] 2:12 | | | 5th [1] 41:7 | | | afterwards [1] 69:11 | | | Associates [4] 1:20 | | |
| 17 [3] 43:15 43:18 | | | -6- | | | again [6] 37:5 37:6 | | | 4:4 5:3 16:21 | | |
| 44:5 | | | 6 [4] 2:17 29:25 | | | 46:9 48:2 57:9 | | | assume [4] 33:4 54:13 | | |
| 1939 [1] 50:24 | | | 68:3 68:5 | | | 64:1 | | | 56:18 58:16 | | |
| 1977 [2] 6:1 6:9 | | | 62 [1] 2:4 | | | age [1] 39:25 | | | assumed [1] 35:15 | | |
| 1981 [2] 5:24 6:11 | | | 65 [1] 2:5 | | | ago [9] 5:13 9:13 | | | attempt [1] 57:24 | | |
| 1982 [1] 7:20 | | | 67 [1] 2:4 | | | 40:16 45:15 60:25 | | | attempted [1] 49:9 | | |
| 1984 [3] 5:12 6:19 | | | 68 [1] 2:17 | | | 61:1 61:1 61:1 | | | attendant [4] 51:22 | | |
| 6:20 | | | -7- | | | 61:2 | | | 52:15 56:15 66:24 | | |
| 1986 [1] 6:24 | | | 750 [1] 29:25 | | | agreed-upon [1] 13:25 | | | attended [2] 5:20 | | |
| 1993 [18] 2:16 44:13 | | | -8- | | | ahead [5] 4:21 30:12 | | | 6:10 | | |
| 44:20 44:24 45:4 | | | 8th [2] 1:21 4:1 | | | 37:1 46:6 63:5 | | | attorney [2] 69:16 | | |
| 46:11 46:24 50:14 | | | -9- | | | aids [1] 14:25 | | | 69:17 | | |
| 57:12 61:12 62:1 | | | 9 [1] 1:19 | | | ailments [1] 14:16 | | | authorized [1] 69:4 | | |
| 62:17 63:15 63:19 | | | 9th [1] 69:23 | | | allergies [1] 29:10 | | | automatically [2] 32:25 | | |
| 65:25 66:10 66:23 | | | -A- | | | allowed [1] 22:15 | | | 33:10 | | |
| 67:5 | | | a.m [2] 1:19 68:9 | | | always [5] 34:21 34:22 | | | available [3] 12:10 | | |
| 1994 [4] 5:4 6:20 | | | -B- | | | 49:3 49:21 56:24 | | | 65:22 66:18 | | |
| 6:25 7:4 | | | 90s - basal | | | Amaze [1] 30:12 | | | aware [3] 4:19 44:11 | | |
| 1996 [8] 21:24 29:13 | | | ERNEST E. CHARLESWORTH, M.D. | | | among [1] 55:14 | | | 45:19 | | |
| 30:21 32:2 32:5 | | | analgesic [1] 29:23 | | | anemia [2] 41:14 41:17 | | | B.S [1] 5:21 | | |
| 32:7 50:23 64:5 | | | anemic [2] 41:13 42:15 | | | answer [9] 13:4 31:11 | | | bachelor's [1] 6:9 | | |
| 1998 [8] 16:12 22:13 | | | 63:20 63:21 66:5 | | | 65:23 66:4 66:5 | | | background [1] 3:22 | | |
| 28:4 28:10 35:5 | | | answers [1] 69:10 | | | bad [1] 20:3 | | | badger [2] 38:8 38:8 | | |
| 52:24 61:16 64:24 | | | anticipate [1] 3:16 | | | basal [2] 26:3 48:19 | | | anyways [2] 13:4 | | |
| 1999 [7] 41:7 43:15 | | | abilities [1] 22:18 | | | able [4] 8:11 12:7 | | | 34:11 | | |
| 43:18 51:22 61:20 | | | abnormal [1] 41:11 | | | absolutely [6] 20:3 | | | apologize [1] 39:6 | | |
| 61:21 66:17 | | | absolutely [6] 20:3 | | | 22:1 22:17 37:3 | | | apparent [1] 55:11 | | |

Multi-Page™

Corps - entries

ERNEST E. CHARLESWORTH, M.D.

| | | | |
|--------------------------------|--------------------------------------|---------------------------------|-------------------------------|
| Corps [1] 6:23 | DAUPHIN [1] 69:1 | diagnostic [1] 14:25 | dozen [1] 25:10 |
| correct [53] 4:22 | Dave [1] 4:12 | difference [1] 26:4 | Dr [58] 6:23 17:25 |
| 4:23 12:21 16:12 | days [3] 11:7 11:15 | different [9] 18:4 | 18:3 19:23 21:1 |
| 16:17 17:7 19:6 | 32:24 | 30:14 30:16 32:13 | 21:5 21:8 31:18 |
| 20:13 25:14 28:6 | deadly [1] 49:3 | 34:20 38:9 38:13 | 40:11 40:14 41:4 |
| 28:10 28:11 30:5 | dealing [2] 60:11 60:14 | 66:4 66:5 | 41:6 41:10 41:22 |
| 30:19 36:10 36:11 | dealings [1] 17:1 | difficult [1] 52:22 | 41:23 42:2 42:11 |
| 37:23 38:4 39:24 | death [3] 10:11 10:23 | difficulty [2] 22:19 | 42:23 43:5 43:12 |
| 40:3 48:11 48:15 | 61:4 | 22:22 | 43:16 43:17 43:18 |
| 49:10 50:4 50:5 | debate [7] 26:8 26:13 | dig [1] 8:18 | 44:12 45:5 45:23 |
| 51:9 52:16 52:21 | 27:11 31:7 49:8 | digging [1] 60:4 | 46:18 51:3 51:3 |
| 53:1 53:15 53:18 | 62:24 63:11 | direction [1] 69:12 | 51:5 51:8 51:11 |
| 54:6 55:4 55:8 | DECEASED [1] 1:6 | directly [1] 69:18 | 52:4 52:6 52:13 |
| 55:16 57:13 58:11 | December [8] 28:10 | disc [6] 18:3 18:4 | 52:14 53:6 53:13 |
| 58:25 59:21 60:14 | 38:20 52:24 61:13 | 21:2 21:5 21:8 | 57:12 57:15 58:3 |
| 61:20 61:21 62:4 | 61:16 61:22 62:1 | 29:11 | 58:4 58:4 58:4 |
| 62:13 62:17 62:22 | 66:3 | discrepancy [1] 50:24 | 58:9 58:13 58:22 |
| 63:17 64:6 64:14 | decision [1] 60:21 | discussed [2] 10:5 | 60:11 60:11 61:11 |
| 66:19 66:20 67:2 | DEFENDANTS [3] 1:14 1:16 1:26 | 32:16 | 61:18 63:14 63:21 |
| 67:11 | definitely [5] 27:13 | discussing [1] 13:16 | 63:25 67:9 67:12 |
| correctly [3] 16:23 | 27:14 45:19 46:2 | discussion [5] 6:7 | driver [1] 29:14 |
| 54:16 55:23 | 51:12 | 26:20 49:7 50:1 | due [2] 54:4 54:4 |
| correspondence [1] 58:1 | definition [1] 54:6 | 67:17 | duly [2] 3:2 69:9 |
| corroborate [1] 27:9 | definitive [1] 61:23 | disease [1] 25:7 | during [8] 3:12 7:3 |
| corroborated [1] 10:17 | degree [1] 6:9 | DISTRICT [2] 1:1 | 22:8 55:13 60:19 |
| cough [1] 36:21 | degrees [1] 5:18 | 1:2 | 61:15 62:1 62:11 |
| counsel [2] 69:16 | deliberately [1] 54:2 | diverticulosis [2] 17:18 | |
| 69:17 | demonstrated [1] 44:12 | 21:11 | -E- |
| county [2] 57:4 69:1 | deny [1] 60:21 | doctor [44] 3:5 3:21 | E [5] 1:15 2:3 |
| couple [7] 5:5 9:15 | depending [3] 23:16 | 5:17 7:15 8:22 | 3:1 3:24 69:7 |
| 9:15 9:17 48:6 | 34:12 50:8 | 11:2 11:21 16:4 | ear [1] 41:24 |
| 62:6 65:20 | deposed [1] 67:10 | 16:11 19:13 21:17 | earache [1] 25:1 |
| course [2] 3:12 15:6 | deposition [12] 1:15 | 22:13 23:23 26:22 | early [1] 56:9 |
| court [2] 1:1 16:6 | 3:7 3:12 8:15 | 27:16 27:24 28:12 | eased [1] 29:2 |
| covering [1] 10:8 | 39:8 52:13 60:19 | 33:14 35:4 36:3 | educatedly [1] 53:14 |
| creases [1] 56:17 | 66:8 68:8 69:9 | 37:18 39:7 39:13 | education [1] 11:3 |
| created [1] 17:5 | 69:13 69:19 | 39:21 43:15 44:10 | eight [1] 67:23 |
| creating [1] 11:13 | depth [2] 50:7 50:10 | 46:10 46:20 47:2 | eighteen [1] 7:9 |
| creation [2] 11:4 | dermal [2] 44:13 44:23 | 47:15 47:19 48:2 | either [17] 8:25 10:20 |
| 12:25 | description [1] 14:16 | 50:13 51:6 51:6 | 11:2 18:18 18:25 |
| critical [1] 23:25 | desk [4] 23:10 33:24 | 51:8 51:13 55:10 | 19:16 22:2 24:6 |
| cross [1] 23:4 | 33:25 64:24 | 57:9 60:18 62:9 | 25:11 25:18 41:12 |
| CUNA [4] 1:12 1:12 | details [1] 40:18 | 64:21 65:20 67:22 | 45:2 56:6 59:16 |
| 3:9 9:7 | detect [1] 20:17 | doctor's [3] 12:6 | 64:3 64:18 64:21 |
| cured [1] 50:9 | determine [1] 65:11 | 18:2 35:9 | electric [1] 30:15 |
| current [5] 8:8 13:24 | determined [1] 66:2 | doctor/patient [1] 11:25 | eliminate [1] 48:19 |
| 21:14 24:3 67:19 | determining [1] 64:21 | doctors [2] 6:21 45:2 | emergency [2] 7:5 |
| curriculum [4] 2:17 | developing [1] 57:22 | document [13] 11:23 | 7:10 |
| 8:8 67:19 68:4 | develops [1] 21:14 | 12:14 12:15 16:11 | employed [2] 64:24 |
| CXR [1] 37:13 | DeVries [1] 6:23 | 17:14 18:21 18:22 | 64:25 |
| | diabetes [2] 25:6 | 27:24 39:13 44:4 | employee [2] 69:15 |
| | 33:11 | 44:22 51:20 66:22 | 69:17 |
| -D- | diagnose [1] 52:21 | documentation [2] 11:16 | employees [3] 23:16 |
| Darlene [1] 8:9 | diagnosed [1] 51:22 | 12:4 | 34:20 65:4 |
| Daryl [1] 4:11 | diagnoses [1] 15:4 | documenting [2] 12:11 | employment [2] 65:1 |
| data [1] 13:21 | diagnosis [16] 12:14 | 14:8 | 65:8 |
| databank [1] 57:5 | 49:10 49:14 50:6 | documents [2] 46:20 | end [1] 43:2 |
| date [14] 1:19 17:20 | 51:14 51:18 52:22 | 52:1 | engineering [1] 5:22 |
| 21:18 21:20 24:5 | 52:25 56:25 59:23 | doesn't [4] 18:16 19:13 | entails [1] 12:9 |
| 28:3 34:16 34:19 | 59:25 61:14 61:23 | 25:16 66:12 | enter [2] 17:10 19:19 |
| 34:24 45:25 51:19 | 61:24 62:2 66:18 | 22:24 39:13 44:4 | entered [1] 31:2 |
| 52:23 65:9 67:22 | | 44:22 51:20 66:22 | entire [2] 4:24 7:1 |
| dated [6] 2:15 16:12 | | documentation [2] 11:16 | entries [3] 4:23 54:18 |
| 32:9 43:14 43:18 | | 12:4 | |
| 44:7 | | documenting [2] 12:11 | |
| | | 14:8 | |
| | | documents [2] 46:20 | |
| | | 52:1 | |
| | | done [2] 22:24 50:6 | |
| | | down [11] 10:14 11:25 | |
| | | 22:25 25:11 38:9 | |
| | | 38:12 38:15 44:15 | |
| | | 64:13 64:16 69:10 | |

| | | | | | | | | |
|-----------------------------|-------|-------|--------------------|-------------|----------------------|----------|----------------------|-------------|
| 15:24 | 17:12 | 23:24 | indicated [1] | 49:7 | January [3] | 1:19 | 23:19 | 53:22 |
| 24:21 | 29:11 | 29:13 | indicates [4] | 43:19 | 41:7 | 69:23 | lesion [3] | 44:13 53:10 |
| 31:4 | 35:24 | 40:19 | 50:17 51:21 | 58:10 | January/February [1] | 45:24 | 53:12 | |
| 41:20 | 42:11 | 42:13 | indicating [4] | 34:7 | jeez [1] | 45:14 | letter [22] | 2:15 42:23 |
| 42:19 | 44:17 | 44:18 | 63:15 64:5 | 64:17 | job [1] | 34:22 | 43:14 | 43:16 43:23 |
| 44:19 | 44:23 | 64:18 | indirectly [1] | 69:18 | JUDGE [1] | 1:14 | 44:7 | 44:10 45:1 |
| holidays [1] | 38:19 | | individual [1] | 15:19 | June [2] | 6:18 7:4 | 46:1 | 46:3 46:9 |
| home [1] | 10:8 | | INDIVIDUALLY [1] | | | | 52:4 | 52:6 58:3 |
| honest [1] | 39:9 | | 1:3 | | | | 58:10 | 58:13 59:2 |
| horse [1] | 29:1 | | information [36] | 3:22 | | | 59:6 | 61:18 63:14 |
| hospital [5] | 6:13 | | 10:10 10:16 | 10:17 | | | 63:21 | 67:9 |
| 8:2 | 24:13 | 56:22 | 12:1 13:6 | 14:13 | | | letters [2] | 29:22 43:25 |
| 57:1 | | | 15:23 22:16 | 23:6 | | | level [2] | 11:16 50:10 |
| hospitalization [2] | 17:19 | | 23:11 23:12 | 29:23 | | | LFT [1] | 37:13 |
| 21:15 | | | 30:24 31:1 | 31:1 | | | license [3] | 7:17 7:19 |
| hospitalization/surgery [1] | | | 31:4 31:18 | 37:21 | | | 8:5 | |
| 23:9 | | | 38:6 38:17 | 42:23 | | | licensed [1] | 7:14 |
| hospitals [1] | 7:25 | | 56:7 57:17 | 57:18 | | | life-threatening [1] | 60:12 |
| Hot [2] | 29:2 | 29:5 | 62:20 62:21 | 63:7 | | | likely [3] | 19:10 48:25 |
| hour [3] | 3:17 | 3:17 | 63:10 63:23 | 64:4 | | | 49:1 | |
| 47:21 | | | 64:12 64:16 | 64:17 | | | Likewise [1] | 58:13 |
| HSM [1] | 37:11 | | 66:16 66:17 | | | | line [11] | 29:12 29:13 |
| huge [1] | 26:4 | | initial [9] | 10:13 22:5 | | | 29:16 | 29:16 29:20 |
| Hurley [9] | 51:3 | 51:4 | 22:9 23:2 | 32:15 | | | 29:21 | 37:7 37:17 |
| 51:5 | 51:8 | 57:12 | 32:16 32:17 | 53:12 | | | 44:11 | 44:23 65:25 |
| 57:15 | 58:4 | 58:13 | 65:21 | | | | lines [2] | 18:3 18:4 |
| 58:22 | | | inside [2] | 36:9 36:16 | | | list [4] | 13:21 14:24 |
| husband [2] | 1:7 | | instances [1] | 25:9 | | | 16:1 | 23:8 |
| 31:8 | | | Institution [1] | 5:20 | | | listed [1] | 29:9 |
| | | | institutions [1] | 5:18 | | | lists [2] | 21:12 29:17 |
| | | | instructed [2] | 23:20 | | | literal [1] | 29:4 |
| | | | 64:12 | | | | LLC [1] | 1:24 |
| | | | instruction [1] | 13:10 | | | LN [1] | 37:9 |
| | | | insurance [8] | 1:13 | | | location [2] | 41:11 |
| | | | 3:9 10:8 | 48:5 | | | 57:7 | |
| | | | 60:20 62:10 | 65:23 | | | long-term [1] | 40:20 |
| | | | 66:21 | | | | longer [2] | 3:16 60:7 |
| | | | intact [2] | 29:18 29:19 | | | look [11] | 17:17 17:18 |
| | | | intake [9] | 22:23 32:16 | | | 18:16 | 31:23 35:1 |
| | | | 54:15 55:7 | 55:23 | | | 41:5 | 47:9 50:3 |
| | | | 58:1 62:22 | 63:7 | | | 52:7 | 54:10 54:21 |
| | | | 64:1 | | | | looked [2] | 39:9 58:11 |
| | | | intention [1] | 54:4 | | | looking [3] | 40:6 51:7 |
| | | | interested [1] | 69:18 | | | looks [8] | 18:6 19:23 |
| | | | internship [1] | 7:19 | | | 28:3 | 29:3 29:5 |
| | | | interpretation [2] | 38:17 | | | 36:25 | 41:16 47:7 |
| | | | 57:16 | | | | lower [3] | 36:19 38:1 |
| | | | interview [1] | 17:9 | | | 38:2 | |
| | | | introduced [2] | 3:5 | | | lumbar [1] | 29:11 |
| | | | 10:6 | | | | lump [6] | 36:9 36:16 |
| | | | investigation [1] | 62:11 | | | 36:19 | 37:24 41:3 |
| | | | involved [1] | 48:19 | | | 51:23 | |
| | | | involving [1] | 9:7 | | | lumps [1] | 36:22 |
| | | | issue [5] | 10:7 12:3 | | | lung [1] | 41:12 |
| | | | 32:13 48:4 | 48:13 | | | Lungs [1] | 37:9 |
| | | | issues [2] | 11:8 34:17 | | | lymph [8] | 32:11 37:9 |
| | | | item [7] | 18:6 20:9 | | | 40:24 | 41:11 50:11 |
| | | | 21:3 21:6 | 21:9 | | | 53:3 | 53:7 53:11 |
| | | | 21:17 36:2 | | | | | |
| | | | items [1] | 22:25 | | | | |
| | | | itself [2] | 67:6 67:8 | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
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| | | | | | | | | |

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number - practice
ERNEST E. CHARLESWORTH, M.D.

| | | | | |
|--|--|---|--|--|
| number [5] 11:22 23:5 23:5 27:12 29:25 NURICK [1] 1:24 nurse [1] 36:14 nurses [1] 28:17 NV [1] 29:18 | operating [1] 15:15 operation [1] 21:15 order [2] 54:10 58:2 organization [1] 57:5 organizations [1] 12:5 original [4] 31:25 32:1 36:24 56:17 OTC [1] 29:23 otherwise [1] 33:3 out-of-state [1] 25:14 outline [1] 58:2 over-the-counter [4] 29:4 29:6 29:23 29:24 oversight [1] 12:4 own [3] 6:24 14:17 64:22 | pathology [36] 32:2 32:4 44:13 46:8 46:10 46:11 49:11 49:13 49:19 49:22 50:1 50:3 50:13 50:17 51:15 51:17 51:24 52:5 52:8 52:8 52:10 52:18 53:2 53:6 58:1 58:6 58:11 58:18 58:20 59:9 59:12 59:20 62:17 66:23 67:10 67:11 | 24:18 33:5 personally [3] 12:24 15:14 24:6 pertain [1] 24:8 phone [3] 23:4 23:5 42:25 photocopy [2] 34:13 39:3 physical [4] 12:11 14:19 14:23 29:17 physician [22] 2:13 15:19 22:15 23:7 24:13 27:21 27:25 33:8 40:2 40:4 40:8 41:24 48:17 48:20 49:17 50:3 51:3 51:21 56:20 57:24 61:12 62:1 physician's [5] 4:8 4:12 15:3 25:14 28:17 physicians [10] 4:7 4:10 4:17 5:14 13:9 23:7 53:1 53:13 60:10 64:23 pick [2] 18:25 56:9 pickup [1] 28:24 pin [2] 38:9 42:16 Pittsburgh [2] 6:10 6:14 place [6] 1:20 22:14 55:14 56:23 57:11 69:14 places [1] 24:12 PLAINTIFF [2] 1:8 1:30 plan [8] 12:16 29:21 37:13 57:23 58:2 58:2 58:8 58:8 plans [1] 60:7 plays [1] 27:10 PMH [2] 29:10 44:16 point [9] 19:4 35:1 36:12 41:5 44:15 45:18 46:3 59:25 60:15 points [1] 41:12 policy [10] 13:14 14:5 22:14 24:7 24:10 24:15 24:18 25:9 35:11 60:21 Polytechnic [1] 5:20 portion [1] 28:15 positive [2] 29:17 40:24 possession [1] 66:5 possibilities [1] 64:7 possible [4] 14:15 28:12 40:22 54:14 potential [2] 25:5 49:6 pounds [1] 37:7 practice [30] 4:3 4:6 4:8 5:4 | |
| -O- | | | | |
| O [1] 31:1 oaths [1] 69:5 objection [4] 19:12 62:25 63:3 67:3 objective [6] 12:12 14:20 14:23 29:17 31:1 37:7 observed [1] 41:3 obtain [5] 23:24 24:7 24:21 25:8 65:13 obtaining [1] 15:15 obviously [2] 3:18 45:17 occasion [1] 40:16 occur [1] 25:16 occurred [1] 9:13 off [5] 6:6 6:7 19:22 49:21 67:17 office [22] 8:9 10:14 13:18 14:1 14:6 15:19 15:20 18:21 19:8 20:16 20:20 22:3 23:16 32:23 33:17 46:5 50:8 56:21 57:3 64:4 65:1 65:5 Oil [2] 6:24 7:4 old [4] 25:3 25:8 65:1 67:23 once [3] 59:23 60:3 60:6 oncologist [1] 45:18 one [49] 2:12 2:13 2:16 3:12 4:7 7:19 7:24 8:10 10:15 11:15 11:22 13:13 16:8 17:25 18:15 26:15 26:16 26:25 27:7 27:8 27:12 27:21 28:16 30:13 35:6 37:16 38:22 38:25 39:2 39:14 40:15 43:20 45:16 46:24 48:15 49:2 52:19 52:20 52:24 55:8 57:2 57:7 60:16 61:7 64:7 66:3 67:24 68:2 68:7 one-and-a-half [1] 29:14 one-time [2] 24:1 33:1 ongoing [3] 13:16 33:9 36:1 onto [3] 22:16 23:11 23:12 | -P- | | | |
| P [1] 29:21 pack [1] 29:14 packet [2] 43:15 61:25 page [16] 2:12 2:13 2:16 16:8 17:22 27:19 27:21 28:9 43:19 44:15 44:22 46:9 46:20 46:21 46:24 55:7 pages [7] 2:14 2:15 2:17 39:16 39:18 44:7 68:4 pain [4] 28:20 29:1 30:18 35:14 Pamela [3] 1:17 69:4 69:24 paragraph [2] 44:11 46:9 parentheses [3] 28:21 28:21 37:10 part [9] 4:8 9:18 12:12 14:5 23:2 38:7 39:2 56:24 68:3 particular [5] 5:7 25:18 33:14 54:11 57:1 particularly [2] 12:10 50:5 parties [1] 69:16 partners [2] 4:5 51:10 parts [2] 17:16 23:13 past [6] 10:10 13:23 24:21 29:11 44:18 44:19 path [11] 32:9 32:21 45:8 45:9 45:10 46:17 46:19 47:8 53:12 58:15 60:17 pathological [4] 2:16 46:24 47:5 50:6 pathologist [2] 50:4 53:9 | | | patient [56] 11:4 11:14 11:24 12:2 12:8 12:9 12:15 12:20 13:17 13:22 13:23 14:10 14:12 14:22 15:21 15:22 17:9 18:18 18:21 18:23 19:11 21:14 22:3 22:6 22:15 23:1 23:24 25:11 26:13 30:24 30:25 33:2 33:13 33:16 33:19 34:1 35:7 35:9 35:10 35:15 36:1 37:22 38:5 44:1 44:16 49:19 55:25 56:7 56:20 58:6 58:7 58:14 62:22 63:4 64:3 64:18 patient's [5] 14:17 15:15 24:8 64:3 64:19 patients [16] 13:11 14:16 17:2 21:13 22:3 22:19 22:21 23:21 24:11 24:24 24:25 25:15 33:4 34:17 35:12 54:3 Pedersen [10] 1:27 1:27 1:29 8:24 8:25 39:10 48:3 55:18 55:21 68:6 penetration [2] 50:7 50:10 Pennsylvania [8] 1:2 1:22 4:2 6:23 7:16 7:18 69:2 69:6 people [16] 5:6 18:16 22:15 22:17 22:18 22:18 23:3 23:10 33:22 38:8 43:20 56:2 58:5 65:2 65:6 65:13 people's [1] 18:15 per [1] 29:15 percent [1] 34:22 performed [1] 15:8 period [5] 6:16 7:3 21:21 32:5 61:15 Periodically [1] 61:5 person [4] 23:17 54:23 64:17 65:3 personal [3] 17:1 | |

Multi-Page™

reported - status
ERNEST E. CHARLESWORTH, M.D.

| | | | | | | | | | |
|---------------------|-------|----------------|-------|-------|-----------------|-------|-------|-------------------|-------|
| 67:13 | 31:3 | 63:16 | 63:20 | 63:25 | 50:21 | 51:8 | 58:22 | somewhere [4] | 25:11 |
| reported [1] | 31:3 | 64:8 | 64:10 | 64:15 | 59:6 | 59:7 | | 25:22 | 45:21 |
| reporter [2] | 16:6 | 64:19 | 66:15 | 67:22 | separate [2] | | 12:12 | sore [2] | 25:1 |
| 69:12 | | right-hand [3] | 20:23 | | 14:3 | | | sorry [11] | 6:1 |
| Reporter-Notary [3] | | 21:4 | 21:6 | | series [1] | 3:10 | | 7:13 | 17:21 |
| 1:18 | 69:11 | 69:25 | | | serious [2] | 31:12 | 31:14 | 26:22 | 27:17 |
| reports [4] | 32:2 | 32:4 | | | seriousness [1] | 35:10 | | 29:5 | 40:5 |
| 53:2 | 59:17 | | | | Service [1] | 6:22 | | sort [1] | 16:23 |
| represent [1] | 48:3 | room [7] | 7:5 | 7:10 | set [4] | 46:5 | 46:6 | source [2] | 53:15 |
| REPRESENTATIVE [1] | | 19:3 | 30:11 | 30:12 | 56:15 | 69:22 | | South [2] | 1:21 |
| 1:4 | | 33:22 | 33:25 | | several [10] | | 13:15 | space [1] | 36:22 |
| representatives [2] | 60:19 | rooms [2] | 30:14 | 30:16 | 18:16 | 36:19 | 38:2 | spasm [1] | 29:18 |
| 66:22 | | roughly [1] | 45:23 | | 38:6 | 38:9 | 38:13 | speak [2] | 14:4 |
| represented [1] | 10:7 | routinely [1] | 25:3 | | 38:14 | 38:16 | 38:24 | speaking [2] | 12:13 |
| represents [1] | 8:23 | ruptured [3] | 18:3 | | severity [1] | | 49:5 | 23:23 | |
| request [12] | 24:12 | Rx [1] | 29:9 | | sheet [16] | 2:12 | 13:21 | specialist [1] | 40:9 |
| 25:3 | 25:10 | | | | 13:25 | 15:21 | 16:8 | specialty [3] | 5:7 |
| 25:19 | 31:17 | | | | 17:10 | 19:18 | 22:25 | 41:23 | 58:12 |
| 34:14 | 34:15 | | | | 26:2 | 54:15 | 55:7 | specific [1] | 38:5 |
| 65:13 | 68:6 | | | | 55:13 | 56:16 | 58:1 | specifically [2] | 9:6 |
| requesting [1] | 27:14 | | | | 64:4 | 69:14 | | 10:20 | |
| requests [2] | 32:25 | | | | sheets [3] | 13:18 | 14:3 | specifics [2] | 9:25 |
| 47:11 | | | | | 55:24 | | | 26:10 | |
| require [1] | 12:3 | | | | shorthand [1] | | 44:16 | specified [2] | 27:5 |
| required [2] | 12:13 | | | | show [2] | 19:1 | 56:4 | 69:14 | |
| 12:18 | | | | | showed [2] | 45:13 | 51:20 | specimen [1] | 51:8 |
| requirement [1] | 53:21 | | | | showing [1] | | 14:20 | speculation [2] | 19:13 |
| requirements [4] | 11:12 | | | | shown [2] | 52:24 | 61:24 | 67:3 | |
| 11:21 | 11:23 | | | | shows [3] | 51:24 | 59:8 | spell [1] | 6:2 |
| requisition [2] | 25:12 | | | | 62:2 | | | spent [1] | 7:3 |
| 25:12 | | | | | sick [1] | 24:25 | | spoken [1] | 9:6 |
| rescind [1] | 60:21 | | | | side [1] | 41:3 | | spread [1] | 53:17 |
| resection [1] | 44:20 | | | | sign [8] | 25:11 | 33:6 | squamous [2] | 26:4 |
| residency [3] | 6:12 | | | | 33:20 | 33:24 | 34:3 | 48:19 | |
| 11:7 | 13:9 | | | | 34:15 | 34:15 | 41:18 | SS [1] | 69:1 |
| resident [1] | 6:14 | | | | signature [2] | | 30:1 | ST [1] | 36:20 |
| resort [1] | 65:15 | | | | 40:11 | | | staff [11] | 18:15 |
| responsibility [1] | 33:5 | | | | signed [3] | 33:17 | 34:7 | 19:18 | 19:19 |
| responsible [1] | 23:14 | | | | 34:25 | | | 55:3 | 55:8 |
| rest [2] | 17:11 | | | | sit [4] | 48:10 | 52:11 | 55:15 | 64:12 |
| resume [1] | 8:8 | | | | 56:14 | 61:11 | | stage [1] | 50:8 |
| retention [2] | 11:4 | | | | situation [5] | | 12:15 | stages [1] | 50:6 |
| 12:25 | | | | | 25:5 | 32:23 | 56:2 | stamp [1] | 28:4 |
| revealed [4] | 44:13 | | | | 60:12 | | | stamped [1] | 28:3 |
| 46:10 | 52:9 | | | | six [2] | 36:23 | 37:4 | stand [1] | 37:14 |
| 52:10 | | | | | slash [4] | 17:19 | 29:2 | standard [3] | 15:14 |
| review [5] | 14:6 | | | | 29:22 | 29:23 | | 15:15 | 16:24 |
| 44:1 | 47:2 | | | | slides [1] | 52:15 | | stands [4] | 28:20 |
| 47:3 | | | | | smoker [1] | 42:15 | | 29:24 | 36:20 |
| reviewed [2] | 45:1 | | | | smoking [6] | | 29:14 | start [1] | 13:8 |
| 58:17 | | | | | 36:22 | 37:4 | 37:6 | started [5] | 7:6 |
| revoked [1] | 8:6 | | | | 40:19 | 41:20 | | 37:5 | 37:6 |
| right [50] | 8:14 | | | | social [1] | 29:13 | | starting [3] | 5:17 |
| 17:19 | 19:22 | | | | SOCIETY [1] | | 1:13 | 11:6 | 35:6 |
| 25:13 | 27:25 | | | | soldier [1] | 47:20 | | state [2] | 22:8 |
| 34:11 | 35:25 | | | | someone [3] | | 20:5 | statements [1] | 45:3 |
| 36:7 | 36:8 | | | | 25:4 | 25:19 | | states [2] | 1:1 |
| 37:2 | 37:19 | | | | Sometime [2] | | 9:18 | stating [2] | 12:18 |
| 37:25 | 38:18 | | | | 39:11 | | | Statistically [1] | 49:2 |
| 39:23 | 44:17 | | | | sometimes [9] | | 18:24 | status [1] | 13:22 |
| 44:25 | 49:2 | | | | 18:25 | 25:16 | 34:13 | | |
| 52:2 | 52:22 | | | | 34:21 | 54:1 | 56:2 | | |
| 56:13 | 57:21 | | | | 56:10 | 65:5 | | | |
| 58:19 | 58:21 | | | | | | | | |
| 60:2 | 60:9 | | | | | | | | |
| 62:3 | 63:9 | | | | | | | | |

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waiting - yourself
ERNEST E. CHARLESWORTH, M.D.

| | | | | |
|------------------------|-------------|---------------------|-------|-------|
| waiting [1] | 19:3 | 6:22 | 7:9 | 7:20 |
| waiver [1] | 34:7 | 11:10 | 29:14 | 45:15 |
| WALLACE [1] | 1:24 | 60:25 | 60:25 | 61:1 |
| wanting [2] | 35:9 | 61:1 | 61:2 | 67:23 |
| 35:17 | | yet [1] | 67:10 | |
| ways [2] | 38:9 38:13 | York [1] | 5:21 | |
| weeks [8] | 9:15 9:16 | yourself [3] | 50:3 | |
| 36:19 38:3 38:6 | | 51:16 60:11 | | |
| 38:14 38:16 38:24 | | | | |
| weight [6] | 28:18 28:19 | | | |
| 36:5 36:23 37:5 | | | | |
| 37:6 | | | | |
| WHEREOF [1] | 69:22 | | | |
| wherever [1] | 24:13 | | | |
| White [2] | 4:11 16:20 | | | |
| wide [1] | 50:11 | | | |
| wife [7] | 26:1 26:14 | | | |
| 27:8 31:8 35:10 | | | | |
| 64:3 64:19 | | | | |
| wife's [1] | 18:19 | | | |
| William [1] | 4:11 | | | |
| window [2] | 22:20 | | | |
| 65:3 | | | | |
| within [1] | 69:5 | | | |
| without [3] | 37:11 | | | |
| 51:15 58:6 | | | | |
| witness [7] | 2:1 | | | |
| 3:2 6:8 55:15 | | | | |
| 69:9 69:21 69:22 | | | | |
| wonder [1] | 18:17 | | | |
| word [2] | 39:4 49:8 | | | |
| words [1] | 14:17 | | | |
| worked [2] | 7:5 65:9 | | | |
| workup [1] | 41:15 | | | |
| worry [1] | 49:3 | | | |
| write [1] | 23:5 | | | |
| writing [20] | 4:24 | | | |
| 18:1 18:4 18:11 | | | | |
| 18:13 18:15 18:18 | | | | |
| 18:19 19:5 19:21 | | | | |
| 19:22 19:25 20:14 | | | | |
| 20:22 20:24 20:25 | | | | |
| 21:1 21:2 21:11 | | | | |
| 36:16 | | | | |
| written [17] | 10:14 | | | |
| 12:25 13:13 14:4 | | | | |
| 15:11 18:3 20:7 | | | | |
| 21:25 22:25 26:12 | | | | |
| 27:2 27:5 27:6 | | | | |
| 27:9 36:18 54:22 | | | | |
| 58:4 | | | | |
| wrote [4] | 20:6 20:7 | | | |
| 21:10 65:14 | | | | |
| <hr/> -X- <hr/> | | | | |
| x-ray [3] | 41:16 42:5 | | | |
| 42:6 | | | | |
| <hr/> -Y- <hr/> | | | | |
| year [6] | 5:23 6:14 | | | |
| 7:17 7:19 13:16 | | | | |
| 65:10 | | | | |
| years [14] | 5:13 5:13 | | | |

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|---|------------|--------------|-------------------------|
| STREET ADDRESS, CITY, STATE, & ZIP CODE | | HOME PHONE | INSURANCE |
| 517 M + PLEASANT RD FAYETTEVILLE PA 17222 | | 717-352-9030 | BLUESHIELD BLUECROSS |
| PATIENT'S EMPLOYER | OCCUPATION | WORK PHONE. | |

Nancy M. Hall

TETANUS

[illegible]

P0905

Charlevoix - 1
-9-02 PS

EXHIBIT

Charlesworth-2
1-9-02 PS

PHYSICIAN PROGRESS NOTES

Tommy B. Hall

Date

APR 30 1998

WT - 201

BP - $\frac{120}{78}$ Lt.

S-clo pain in Lt leg (calf)

Pushing pushing fault on flat ground to get it started
 to stop then "choking horse" but pain has not
 eased & very tight / stiff @ walk. Tend ky hit, no other Rx
 NKA Meds? none

Imp? looks dark saying xL i hit / motion pre op
 ? melanoma removed breast 1996

sgo' truck driver x 4 years, smoking 1 1/2 MD

O: ⊕ Spasm i mild pushing @ calf
 strength intact N-V intact

D: muscle strain @ calf

M: stretching / rest / Amblyon o/c per
 Stephen Melton 750-06

12-11-98 WT - 209

BP - $\frac{120}{74}$ Rt

S-clo lump on inside of throat

lump @ lower neck of throat & lateral necks
 @ RT @ base SN. @ cage @ chest cage

no other new lumps (part early x 6 months, not 520, others)

O: Firm nodule = 1.5 cm @ lymphatic no other lumps
 by the first chest (glandular) O/L - 6/10

A: ? small

P: ✓ Calf, leg, LFT, Cx
 Reo tough it not gone

P0906

ORIGINAL 8

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW
AS THE REPRESENTATIVE AND :
ADMINISTRATRIX OF THE ESTATE :
OF TOMMY HALL, DECEASED, HER :
HUSBAND, :
PLAINTIFF :
V : 1:01-CV-1265
CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE SOCIETY, :
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: JAMES M. CHICKLO, M.D.

TAKEN BY: DEFENDANTS

BEFORE: PAMELA S. SULLIVAN,
REPORTER-NOTARY PUBLIC

DATE: JANUARY 9, 2002, 1:04 P.M.

PLACE: OFFICE JAMES M. CHICKLO, M.D.
1039 WAYNE AVENUE
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

McNEES WALLACE & NURICK, LLC
BY: MICHAEL R. KELLEY, ESQUIRE

FOR - DEFENDANTS

PEDERSEN & PEDERSEN
BY: STEPHEN R. PEDERSEN, ESQUIRE
CATHERINE M. MAHADY-SMITH, ESQUIRE

FOR - PLAINTIFF

HAFN
Reporting Service, Inc.
Hughes
Albright
Foltz
Natale

Page 2

1 WITNESS

2 NAME EXAMINATION

3 JAMES M. CHICKLO, M.D.

4 BY: MR. KELLEY 3, 38

5 BY: MR. PEDERSEN 29, 41

6

7

8

9

10 EXHIBIT

11 CHICKLO EXHIBIT NO. PRODUCED & MARKED

12 1 - MINOR HISTORY AND PHYSICAL EXAMINATION
DATED 1-22-99, TWO PAGES 18

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Page 4

1 at the conclusion of my questions.

2 A Okay.

3 Q First, what I would like to do is just get a

4 little bit of background information on you. Do you have a

5 current curriculum vitae or a professional resume?

6 A I might. Yeah, I think I do. I think we have

7 one back there. I could get it for you.

8 Q That would be helpful. And in the meantime,

9 we'll go through at least a few of these questions. But I

10 have a feeling that much of this will be contained on your

11 curriculum vitae.

12 A Okay.

13 Q First of all, give us your full name, Doctor.

14 A James Michael Chicklo, C-H-I-C-K-L-O.

15 Q And your business address here?

16 A 1039 Wayne Avenue, Chambersburg.

17 Q And is there a name to your practice?

18 A Same name. James M. Chicklo, M.D., P.C.

19 Q Are you in practice with any other physicians?

20 A Not currently, no.

21 Q How long have you been in practice under your

22 current name?

23 A Twenty-seven years.

24 Q Do you have a particular medical specialty?

25 A Inner ear, nose and throat.

Page 3

1 JAMES M. CHICKLO, M.D., called as a witness,

2 being duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. KELLEY:

5 Q Doctor, good afternoon. My name is Mike Kelley.

6 I'm a lawyer from Harrisburg. I represent CUNA Mutual

7 Insurance Company in a case that's been filed against CUNA

8 by Nancy Hall and the estate of Tommy Hall. We're here

9 today to ask you some questions regarding your treatment of

10 Mr. Hall.

11 If at any time during the course of the

12 deposition you don't understand any of the questions that

13 are asked, please let us know and we'll try to rephrase it.

14 Fair enough?

15 A Sure.

16 Q If at any time during the deposition you need a

17 break, let us know and, of course, we'll accommodate you for

18 that. I anticipate that my questioning will take about an

19 hour to an hour and a half. And when I'm done -- I don't

20 know if it's --

21 MS. MAHADY-SMITH: Steve.

22 MR. PEDERSEN: I will be asking some follow-up

23 questions.

24 BY MR. KELLEY:

25 Q Mr. Pedersen may have some questions for you then

Page 5

1 Q Have you practiced that specialty for all 27

2 years that you've been practicing under this name?

3 A Yes, um-hum.

4 Q Doctor, can you describe for us your formal

5 education after high school?

6 A I went to the University of Virginia

7 undergraduate and University of Virginia Medical School. I

8 was at the University of Kentucky for an internship and two

9 years of residency. And I was in the service, the Air

10 Force, as a base surgeon for two years and then three years

11 as an ear, nose and throat resident at the University of

12 Kentucky -- at the University of West Virginia, West

13 Virginia University.

14 Q What year did you graduate from the medical

15 school in Virginia?

16 A '59.

17 Q And when did you complete your residency?

18 A No, wait a minute. '59, yeah. No, '63. I'm

19 sorry, '63 from medical school. The undergraduate is '59.

20 Q When did you complete your residency in ear, nose

21 and throat?

22 A '72.

23 Q And that was at West Virginia?

24 A West Virginia.

25 Q I'm sorry. And after your residency, you were in

Page 10

1 A I hope it's the same.

2 Q But if you would, just so we can mark this for

3 the record.

4 A That's it right there. You just passed it.

5 That's it.

6 Q Okay, that's been marked in a previous

7 deposition, I believe, as Charlesworth -- what number is

8 that, Doctor, at the top there?

9 A Three.

10 Q Charlesworth 3. So that's a form that you had

11 created yourself?

12 A Um-hum. Most specialists have their own forms

13 that they use.

14 Q Other than that form, are there any other either

15 forms or written guidelines or procedures that you use in

16 the creation or maintenance of medical records?

17 A No.

18 Q Now, you mentioned that your staff will sometimes

19 put information onto these records. Is that right?

20 A Yeah, that's whose writing is on here for the

21 most part except mine.

22 Q Well, let's go over this document while we've got

23 it. You've got your original there. Is that right, Doctor?

24 A Um-hum.

25 Q Charlesworth 3 at the top says, January 15 of

Page 11

1 1999. Is that right?

2 A Yep, January 15th.

3 Q Is that the first time then that you would have

4 seen Mr. Hall?

5 A Exactly, this is an initial sheet, when we saw a

6 patient for the first time. This is how I know when they're

7 first seen.

8 Q And this a two-page document, isn't it?

9 A Yes, um-hum.

10 Q And on the first page, it has C; slash, O at the

11 top?

12 A Complaint, yeah. And HPI is history of present

13 illness.

14 Q And then PMH?

15 A Past medical history.

16 Q And then it has information for family history

17 and your physical examination as well as other information.

18 Correct?

19 A Yes, whether they smoke or have had any trauma

20 that type of thing.

21 Q And, obviously, this is for Tommy Hall. It has

22 his patient name at the top. Correct?

23 A Um-hum.

24 Q Now, what was the purpose as you understood it

25 that you were seeing Mr. Hall for beginning on January 15 of

Page 12

1 1999?

2 A He was referred because he had a lump on his left

3 side of his neck and it had increased in size over the

4 previous four weeks that he had it, I guess.

5 Q And you mentioned that some of the writing on

6 here is from your staff?

7 A My secretary, um-hum.

8 Q Your secretary. Which writing is your

9 secretary's?

10 A The top line.

11 Q Where it says CO, the very top line there?

12 A Yes, um-hum. And medications, the surgery that

13 he had had.

14 Q This is -- now you're under the patient medical

15 history?

16 A Under surgery, yeah. Except where it says on

17 back, that's mine.

18 Q So focusing on that part that says surgery, it

19 says spinal -- what's that abbreviation?

20 A Surgery times two. He must have had back

21 surgery.

22 Q And 1989 and --

23 A '89 and '93.

24 Q And then where it says mole; slash, CA --

25 A Right.

Page 13

1 Q -- do you have an understanding of what that

2 means?

3 A That says a cancerous mole excised in 1993.

4 That's -- my secretary wrote that.

5 Q And did you circle the '93 or was that her, your

6 secretary?

7 A Probably, I did. And I put to find that on the

8 back.

9 Q And it mentions Guthrie there?

10 A Dr. Guthrie, yes.

11 Q Is that your writing?

12 A That's the secretary's writing.

13 Q Who's your secretary that was writing this back

14 in January of --

15 A Paula Statler. She's here.

16 Q Is she still with you?

17 A Um-hum.

18 Q Can you spell her last name?

19 A S-T-A-T-L-E-R. And the other thing she wrote was

20 the anemia, the lack of bleeding tendencies and his habits,

21 that he smoked.

22 Q Is any -- other than on back --

23 A The nasal trauma is mine. And all the rest is

24 mine, all the exam.

25 Q I'm sorry. The nasal trauma, where is that?

Page 18

1 it was a malignant mole, you still had to do a biopsy. If
 2 it wasn't a malignant mole, it was in an area that was
 3 growing that should be biopsied. So I didn't request that,
 4 his records. I don't have that I did anyway.
 5 Q Doctor, is it okay if I sit this up there?
 6 A Go right ahead.
 7 Q The next document I want to call your attention
 8 to, Doctor -- and maybe you've got it there in your original
 9 records -- is at the top it says, Minor history and physical
 10 examination, dated January 22, '99.
 11 A Yeah, pre-op. Yes, okay.
 12 MR. KELLEY: Let's mark that as Chicklo 1.
 13 (Minor history and physical examination dated
 14 1-22-99, two pages, produced and marked Chicklo Exhibit No.
 15 1.)
 16 BY MR. KELLEY:
 17 Q Doctor, you've got that record in front of you.
 18 Is that right?
 19 A Um-hum.
 20 Q First of all, how was this record prepared?
 21 A Dictated from this sheet in the office. It's
 22 dictated from this.
 23 Q So you dictate that based upon --
 24 A Based on what I have written.
 25 Q -- the January 15, '99 intake form?

Page 19

1 A Exactly.
 2 Q And then do you also include additional
 3 information if you are --
 4 A If I have any, yes. If the lab tests are
 5 abnormal or something like that.
 6 Q So you would dictate this document, and it would
 7 be typed up by your secretary. Is that right?
 8 A The hospital types these up.
 9 Q Oh, the hospital types it up. Do you then review
 10 it to make sure it's accurate?
 11 A Yeah. Within reasonable limits, I look it over.
 12 I don't study it like you guys do documents. You have to
 13 have -- this is a part of the standard. When you do any
 14 procedure in the hospital, you have to have a history and
 15 physical, preferably typed rather than written.
 16 Q And the personal history here, focusing on that
 17 for a moment, mentions that he had a malignant mole excised
 18 in 1993 on his back?
 19 A On his back, that's right. That's based on this
 20 history here, my history.
 21 Q So there's -- you have the information that was
 22 in the intake form, and then you also discussed his history
 23 with the patient. Correct?
 24 A Right, initially.
 25 Q And then based upon that information, you made a

Page 20

1 notation, you dictated in this particular medical record
 2 that he had had a malignant mole excised in 1993 on his
 3 back?
 4 A Right, right. And my working diagnosis said,
 5 Left cervical node. Because you can't presume to make a
 6 diagnosis until you get the, you know, report.
 7 Q Now, it says, History of present illness. The
 8 patient complained of a lump in the left neck for about five
 9 weeks.
 10 A Yep.
 11 Q Is that right?
 12 A Yes.
 13 Q Would that information have come from the patient
 14 himself?
 15 A Yes. That's what he said initially, that it
 16 increased, he had this node that increased in size.
 17 Q Doctor, do you recall the patient being unsure
 18 about him having had this malignant mole excised back in
 19 1993?
 20 A It's hard for me to say, you know, that the
 21 patient is absolutely sure that he has anything. I mean, he
 22 was concerned that he had this node. I'm sure he was
 23 concerned that he had some surgery before. I can't remember
 24 whether he thought it was a malignancy or not. I cannot say
 25 either way for that. I mean, that's a history he gave to

Page 21

1 Paula. And I'd have to take him at his word if he was aware
 2 of that diagnosis. I don't know.
 3 Q My question really is a different one. It is, Do
 4 you recall as you sit here today him expressing any
 5 uncertainty to you? For instance saying, You know, Doc, I
 6 may have had this -- I had this mole excised in 1993. I
 7 can't remember whether it was malignant or not.
 8 MR. PEDERSEN: Objection, asked and answered.
 9 BY MR. KELLEY:
 10 Q Go ahead. You can answer that, Doctor.
 11 A I hate to say for sure, but my recollection -- I
 12 mean, I see thousands of patients. He might have -- he may
 13 have been concerned. But I'm not sure that he was certain,
 14 you know, he had a problem. I think he was concerned
 15 though. He was concerned over this node. As I remember, I
 16 think he was worried about it.
 17 Q Worried about the node on his neck?
 18 A Yes, yes. But I don't -- I can't remember
 19 anything else about it for sure.
 20 Q If he had expressed uncertainty to you about his
 21 previous medical condition, would you have noted that in the
 22 record?
 23 A Probably. Yeah, probably.
 24 Q How many times did you actually see Mr. Hall?
 25 A One, two times -- three times. His initial

Page 26

1 A If -- yeah, if it was critical to the patient
2 care. I mean, if it was a wrong diagnosis or something he
3 had come up with, then I would, yes.
4 Q Did you ever have any conversations with Dr.
5 Chicklo to find out how he --
6 MR. PEDERSEN: You mean Cashdollar.
7 BY MR. KELLEY:
8 Q Excuse me, I meant Dr. Cashdollar -- to find out
9 what pathology he was referring to back in 1993?
10 A No, I didn't.
11 Q Did you ever have any conversations with him to
12 find out how he was aware of what you were aware of with
13 regard to that '93 dermal lesion?
14 A No, I don't know if he got that from the patient
15 or from my records.
16 Q Now, in the middle of that first page where it
17 says PMH -- I presume that means past medical history?
18 A Past medical history, yes.
19 Q It says, It's most notable for the malignant
20 melanoma. Surgical resection in 1993. Do you know if Dr.
21 Cashdollar is simply taking that information from your
22 records or if that's --
23 A I don't know.
24 Q Or if that's his own --
25 A I don't know. Yeah, I really don't.

Page 27

1 Q Do you know Dr. Charlesworth?
2 A Um-hum.
3 Q I see he's copied on this letter as well, the
4 second page.
5 A Yes.
6 Q Did you ever have any conversations with
7 Dr. Charlesworth about Mr. Hall's treatment?
8 A You know, I don't think I have. I really don't
9 think I have.
10 Q Do you know Dr. Enders?
11 A Yes.
12 Q I see he's also copied on this letter. Do you
13 see that?
14 A Yes.
15 Q Have you ever had --
16 A Because of the anemia problem. Not in regard to
17 this case, I haven't, no, that I can remember anyway.
18 Q At some point in time then, Doctor, did you refer
19 Tommy Hall to another physician?
20 A I referred him to Dr. Cashdollar.
21 Q For what reason did you refer him to Dr.
22 Cashdollar?
23 A Because he's an oncologist, and they treat this
24 cancer of this type.
25 Q Other than this correspondence from Dr.

Page 28

1 Cashdollar that we just talked about, did you receive any
2 other written correspondence or written communication from
3 Dr. Cashdollar concerning his care and treatment?
4 A I don't believe so. If it's on the record, then
5 I did. Otherwise, I wouldn't have talked to him about that.
6 Q Did you have any -- I'm sorry if I already asked
7 this. Did you have any oral conversations, any phone
8 conversations or any in person conversations with Dr.
9 Cashdollar?
10 A No. I can't remember any, you know.
11 Q Would you have had any reason, Doctor, to
12 actually see the medical intake information that Cashdollar
13 undertook when he first met with Tommy Hall?
14 A No. I did receive some information from the NIH.
15 But I don't know if that was from you guys stimulating that
16 or -- something August 17th that was sent to me of his
17 original or some path report. I don't know where that came
18 from.
19 Q August 17 of what year?
20 A '99. It said that some specimens were submitted
21 to someplace -- NIH?
22 Q Is that the one referring to the '93 specimen?
23 A Yeah. It says, Specimen. Somebody sent that.
24 I'm not sure who had sent that.
25 Q Did you ever see the result of that analysis?

Page 29

1 A I saw this, but I don't know if I have a result
2 of that or not. No, I don't think I have that result.
3 Q Doctor, do you have any records that you would
4 simply provide to the patient upon their arrival for them to
5 fill out?
6 A No. We take our histories ourselves. They don't
7 fill those out. Some offices do do that.
8 Q Doctor, have you ever seen a pathology report
9 with regard to any mole that was removed back in 1993
10 regarding Mr. Hall?
11 A No.
12 MR. KELLEY: Okay, that's all the questions I
13 have for you. Mr. Pedersen may have more. Thank you,
14 Doctor.
15 THE WITNESS: You're welcome.
16 EXAMINATION
17 BY MR. PEDERSEN:
18 Q Dr. Chicklo, now it's my turn to ask a few
19 questions. Most of these are follow-up questions from what
20 you've already heard.
21 What I'd like to do is first of all set in
22 reference the time period that you saw Mr. Hall. The first
23 time that you saw him was in January of '99?
24 A January, yes.
25 Q Do you have any information from any records that

Page 34

1 Q And, again, that doesn't tell us anything about
2 what Tommy Bob Hall knew in November of '98, does it?
3 A No.
4 Q You reference in that sheet that a lump had been
5 present for five weeks, and I believe you testified that it
6 had increased in size over a four-week period. Is that
7 correct?
8 A Yeah.
9 Q Well, if we date back from the 15th, that would
10 put it about the end of November or beginning of December
11 when the lump would have first appeared. Isn't that
12 correct?
13 A Yes, sir.
14 Q Did I understand your testimony to be correct
15 that when Tommy Bob Hall saw you, you were not concerned
16 with the history of that mole, whether it was malignant or
17 not, because you were aware there was a mole and you were
18 treating the cervical node. Is that correct?
19 A Exactly.
20 Q Because whether it was malignant or not did not
21 affect how you were going to care for Mr. Hall?
22 A No, it still needed a biopsy.
23 Q Can you explain from a medical perspective the
24 relationship between a mole and the cervical node that you
25 observed in Tommy Bob Hall?

Page 35

1 A Well, the node is under the skin. A mole
2 generally is on the skin surface. You can see it whether
3 it's colored or discolored. The neck node was just a firm
4 mass, and you don't have any idea where that's from. That
5 could have come from anything. It could have been any type
6 of tumor or growth.
7 I mean, the fact that he had a melanoma excised
8 in the past -- if it was a melanoma. In retrospect, it was.
9 But anytime somebody has some skin lesion near where you
10 are, that puts your antenna up to think about that and maybe
11 warn the pathologist when the path is coming that you
12 suspect it could be this or he had a history of having a
13 mole. Whether it's benign or malignant, you would probably
14 mention that to them.
15 Q The primary site is -- has to be something other
16 than the lump in the neck. Is that correct?
17 A Generally, yes. That's why I see people because
18 I look at their nodes and throat. And, statistically, it
19 comes from in here if it's not lung or kidney. But mostly
20 in this area, about 80 percent of them. So you scope them,
21 and you look at them in the office like I did. And I didn't
22 see any other areas involved.
23 Q So when you were involved with the history and
24 the caring for Mr. Hall and you heard that he had had a mole
25 whether it was malignant or not and now you feel a node, in

Page 36

1 your mind, were you making a relationship between the two?
2 A Yes.
3 Q And you would have made the same relationship
4 whether he reported it as malignant, benign -- because of
5 that mole?
6 A Yes, I still would have been suspicious.
7 Q Did you also indicate in your direct testimony
8 that you cannot presume to make a diagnosis without getting
9 a report?
10 A Yes. You have to get a -- you have to have a
11 report.
12 Q And you're referring to a path report,
13 pathological finding?
14 A Yes, sir.
15 Q Why can't you presume to make a diagnosis from
16 simply taking a history?
17 A Because sometimes -- not all lumps are cancer.
18 They're referred to as tumors, which means swelling. Cancer
19 is a specific type of swelling, and there are different
20 types of cancer which require different treatments.
21 Melanoma requires a different treatment than lymphoma does.
22 MR. PEDERSEN: Just a minute.
23 (Discussion held off the record.)
24 BY MR. PEDERSEN:
25 Q Are you aware of whether or not if there is a

Page 37

1 diagnosis of cancer or a tumor that there is a registry
2 where that diagnosis has to be made?
3 A Yes.
4 Q Can you describe that registry for us?
5 A The hospital records all the cancers that are
6 treated in this area. And I believe it's in York, they
7 record them. And then they're all registered for this area.
8 They have the statistics dating back for a number of years,
9 the different types of cancer and where they originate, what
10 part of the body.
11 Q We've taken Dr. Hurley's deposition under oath.
12 And I know you have not read that deposition. Isn't that
13 correct?
14 A I haven't talked to any of the other doctors.
15 Q Assuming Dr. Hurley said in his deposition that
16 the -- he got a pathology report, the '93 report that you
17 have seen. And he reported to the patient that the mole was
18 benign. Do you have anything to refute or dispute --
19 MR. KELLEY: Object to the form.
20 BY MR. PEDERSEN:
21 Q -- that he would report to the patient that?
22 MR. KELLEY: You can answer.
23 THE WITNESS: I don't. I don't, no.
24 BY MR. PEDERSEN:
25 Q In fact, if you had gotten that pathology report,

Page 42

1 A No, it's not.
2 MR. PEDERSEN: Okay, I don't have any other
3 questions.
4 MR. KELLEY: That's it. Thank you, Doctor.
5 (Whereupon, the deposition was concluded at 2:02
6 p.m.)
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Page 43

1 COUNTY OF DAUPHIN :
SS
2 COMMONWEALTH OF PENNSYLVANIA :
3
4 I, Pamela S. Sullivan, a Notary Public, authorized to
5 administer oaths within and for the Commonwealth of
6 Pennsylvania, do hereby certify that the foregoing is the
7 testimony of James M. Chicklo, M.D.
8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.
13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.
15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.
19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.
22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 9th day of January, 2002.
24 Pamela S. Sullivan
25 Reporter-Notary Public

1 COUNTY OF DAUPHIN :
2 COMMONWEALTH OF PENNSYLVANIA : SS

3
4 I, Pamela S. Sullivan, a Notary Public, authorized to
5 administer oaths within and for the Commonwealth of
6 Pennsylvania, do hereby certify that the foregoing is the
7 testimony of James M. Chicklo, M.D.

8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.

13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.

15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.

19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.

22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 9th day of January, 2002.

24 **NOTARIAL SEAL**
PAMELA S. SULLIVAN, Notary Public
Swatara Twp., Dauphin County
My Commission Expires Jan. 31, 2005

25 *Pamela S. Sullivan*
Pamela S. Sullivan
Reporter-Notary Public

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JAMES M. CHICKLO, M.D.

| | | | | | |
|-----------------------|------|------|------------------------|------------------------|--------------------------|
| -*- | | | 3 [3] 2:4 10:10 | anytime [1] 35:9 | business [1] 4:15 |
| '59 [3] 5:19 | 5:16 | 5:18 | 10:25 | anyway [2] 18:4 | |
| '63 [2] 5:18 | 5:19 | | 38 [1] 2:4 | 27:17 | -C- |
| '72 [1] 5:22 | | | | APPEARANCES [1] 1:23 | C [1] 11:10 |
| '88 [1] 23:9 | | | -4- | appeared [1] 34:11 | C-H-I-C-K-L-O [1] 4:14 |
| '89 [1] 12:23 | | | 4 [1] 22:25 | area [4] 18:2 35:20 | CA [1] 12:24 |
| '93 [17] 12:23 13:5 | | | 41 [1] 2:5 | 37:6 37:7 | cancer [14] 15:21 22:11 |
| 17:14 25:16 26:13 | | | -8- | areas [1] 35:22 | 27:24 30:9 30:15 |
| 28:22 30:25 31:3 | | | 80 [1] 35:20 | Army [1] 6:3 | 31:11 32:7 33:14 |
| 31:18 31:18 32:10 | | | -9- | arrival [1] 29:4 | 36:17 36:18 36:20 |
| 33:1 33:8 37:16 | | | 9 [1] 1:19 | assume [1] 16:16 | 37:1 37:9 40:6 |
| 39:23 41:7 41:18 | | | 9th [1] 43:23 | assumes [1] 39:10 | cancerous [13] 13:3 |
| '98 [8] 23:9 23:16 | | | -A- | Assuming [1] 37:15 | 16:15 17:6 17:13 |
| 30:2 30:3 30:6 | | | abbreviation [1] 12:19 | attempt [1] 30:8 | 31:19 31:21 33:8 |
| 30:9 30:10 34:2 | | | ability [1] 15:2 | attention [2] 18:7 | 38:22 38:25 39:8 |
| '99 [11] 18:10 18:25 | | | able [1] 41:4 | 22:17 | 39:23 40:17 41:8 |
| 22:4 28:20 29:23 | | | abnormal [3] 19:5 | attorney [2] 43:16 | cancers [1] 37:5 |
| 32:9 32:13 32:16 | | | 31:15 31:16 | 43:17 | cannot [3] 20:24 36:8 |
| 32:25 33:6 33:25 | | | absolutely [2] 20:21 | August [2] 28:16 28:19 | 38:7 |
| -1- | | | 40:7 | authorized [1] 43:4 | caption [1] 43:14 |
| 1 [3] 2:12 18:12 | | | accommodate [1] 3:17 | available [1] 25:14 | care [3] 26:2 28:3 |
| 18:15 | | | accurate [8] 9:7 | Avenue [2] 1:21 | 34:21 |
| 1-22-99 [2] 2:12 | | | 14:23 19:10 30:10 | 4:16 | cared [2] 33:10 33:11 |
| 18:14 | | | 40:3 40:13 40:14 | aware [17] 21:1 24:7 | caring [1] 35:24 |
| 1-28 [1] 22:3 | | | 41:16 | 24:11 25:5 25:7 | case [8] 3:7 7:9 |
| 10 [2] 8:11 8:12 | | | act [1] 31:16 | 26:12 26:12 30:15 | 7:18 7:19 8:2 |
| 1039 [2] 1:21 4:16 | | | action [2] 1:3 43:18 | 33:7 34:17 36:25 | 16:14 24:24 27:17 |
| 15 [3] 10:25 11:25 | | | add [1] 38:4 | 38:25 39:1 39:8 | Cashdollar [14] 22:20 |
| 18:25 | | | addition [1] 15:20 | 39:8 39:11 41:7 | 23:5 24:16 24:19 |
| 15th [4] 11:2 23:2 | | | additional [1] 19:2 | away [1] 41:5 | 26:6 26:8 26:21 |
| 33:25 34:9 | | | address [1] 4:15 | | 27:20 27:22 28:1 |
| 17 [3] 22:19 23:1 | | | administer [1] 43:5 | -B- | 28:3 28:9 28:12 |
| 28:19 | | | ADMINISTRATRIX [1] 1:5 | background [1] 4:4 | 41:23 |
| 17th [2] 23:3 28:16 | | | adult [1] 8:11 | base [2] 5:10 17:8 | Cashdollar's [3] 23:13 |
| 18 [2] 2:12 8:13 | | | affect [1] 34:21 | based [5] 18:23 18:24 | 25:2 41:14 |
| 1988 [2] 23:12 23:15 | | | afternoon [1] 3:5 | 19:19 19:25 38:4 | CATHERINE [1] 1:29 |
| 1989 [1] 12:22 | | | afterwards [1] 43:11 | basement [1] 8:16 | center [3] 6:20 6:21 |
| 1993 [17] 13:3 15:22 | | | again [2] 34:1 39:6 | became [1] 41:7 | 6:22 |
| 19:18 20:2 20:19 | | | against [1] 3:7 | began [1] 41:8 | certain [1] 21:13 |
| 21:6 22:15 24:8 | | | age [1] 8:13 | beginning [2] 11:25 | certainly [2] 40:11 |
| 24:16 26:9 26:20 | | | ago [2] 7:11 7:12 | 34:10 | 41:18 |
| 29:9 38:22 38:25 | | | agree [3] 32:24 40:2 | benign [5] 32:17 35:13 | certifications [1] 6:14 |
| 39:8 39:11 40:18 | | | ahead [5] 18:6 21:10 | 36:4 37:18 38:2 | certified [2] 6:9 |
| 1998 [4] 23:12 38:17 | | | Air [2] 5:9 6:4 | between [2] 34:24 | 6:13 |
| 39:1 39:9 | | | analysis [1] 28:25 | 36:1 | certify [5] 43:6 43:8 |
| 1999 [5] 11:1 12:1 | | | anemia [2] 13:20 27:16 | biopsied [1] 18:3 | 43:13 43:15 43:19 |
| 22:19 38:18 38:21 | | | answer [6] 21:10 30:12 | biopsy [2] 18:1 34:22 | cervical [3] 20:5 |
| 1:01-CV-1265 [1] 1:10 | | | 37:22 39:5 39:13 | bit [1] 4:4 | 34:18 34:24 |
| 1:04 [1] 1:19 | | | 41:10 | bleeding [1] 13:20 | Chambersburg [4] 1:22 |
| -2- | | | answered [1] 21:8 | board [6] 6:2 6:9 | 4:16 6:19 6:24 |
| 2002 [2] 1:19 43:23 | | | answers [1] 43:10 | 6:11 6:12 6:13 | Charlesworth [6] 10:7 |
| 22 [1] 18:10 | | | antenna [1] 35:10 | 6:14 | 10:10 10:25 22:25 |
| 27 [2] 5:1 15:1 | | | anticipate [1] 3:18 | Bob [10] 30:5 30:9 | 27:1 27:7 |
| 29 [1] 2:5 | | | | 30:22 32:1 33:11 | Charlesworth's [1] 39:15 |
| 2:02 [1] 42:5 | | | | 34:2 34:15 34:25 | chemotherapy [1] 22:7 |
| -3- | | | | 41:5 41:6 | Chicklo [12] 1:15 |
| | | | | body [1] 37:10 | 1:20 2:3 2:11 |
| | | | | break [1] 3:17 | 3:1 4:14 4:18 |
| | | | | brief [1] 41:3 | 18:12 18:14 26:5 |
| | | | | briefly [1] 8:3 | 29:18 43:7 |
| | | | | | children's [1] 8:12 |
| | | | | | circle [1] 13:5 |
| | | | | | circled [1] 15:23 |

| | | | | |
|------------------------------|---------------------------------|-------------------------------|-------------------------------|-------|
| Force [2] 5:10 6:4 | hereby [1] 4:8 | 16:20 16:20 19:3 | learning [1] | 8:25 |
| foregoing [1] 43:6 | hereof [1] 43:14 | 19:21 19:25 20:13 | least [5] 4:9 25:7 | 25:7 |
| form [15] 9:14 9:17 | hereunto [1] 43:22 | 25:20 26:21 28:12 | 30:18 30:20 30:23 | 30:23 |
| 10:10 10:14 14:4 | high [1] 5:5 | 28:14 29:25 32:1 | left [4] 12:2 20:5 | 20:5 |
| 15:13 18:25 19:22 | himself [3] 15:7 15:10 | 41:9 41:16 | 20:8 24:7 | |
| 30:12 31:5 31:20 | 20:14 | initial [3] 9:18 11:5 | legible [1] 9:7 | |
| 32:14 37:19 39:2 | histories [2] 29:6 | 21:25 | length [1] 8:18 | |
| 41:10 | 40:12 | injured [1] 14:2 | lesion [3] 24:8 26:13 | 26:13 |
| formal [1] 5:4 | history [31] 2:12 | Inner [1] 4:25 | 35:9 | |
| forms [2] 10:12 10:15 | 11:12 11:15 11:16 | instance [1] 21:5 | less [1] 16:17 | |
| fortunate [1] 41:4 | 12:15 15:16 16:1 | Insurance [2] 1:13 | letter [7] 22:19 23:13 | 23:13 |
| four [1] 12:4 | 17:11 17:16 18:9 | 3:7 | 24:5 27:3 27:12 | 27:12 |
| four-week [1] 34:6 | 18:13 19:14 19:16 | intake [3] 18:25 19:22 | 41:15 41:22 | |
| front [2] 18:17 31:17 | 19:20 19:20 19:22 | 28:12 | letters [1] 23:25 | |
| full [1] 4:13 | 20:7 20:25 24:16 | interested [1] 43:18 | license [1] 7:1 | |
| | 24:22 25:9 25:22 | internship [1] 5:8 | licensed [1] 6:6 | |
| -G- | 26:17 26:18 33:16 | interview [1] 14:16 | likely [1] 40:22 | |
| general [4] 6:3 6:10 | 34:16 35:12 35:23 | involved [2] 35:22 | limits [1] 19:11 | |
| 7:25 25:24 | 36:16 40:3 40:9 | 35:23 | line [3] 12:10 12:11 | 12:11 |
| generally [2] 35:2 | home [1] 7:24 | -J- | 24:6 | |
| 35:17 | hope [2] 10:1 22:3 | James [7] 1:15 1:20 | LLC [1] 1:24 | |
| given [1] 43:20 | hospital [7] 6:19 | 2:3 3:1 4:14 | logic [2] 38:24 39:7 | 39:7 |
| good [3] 3:5 9:2 | 6:23 6:24 19:8 | 4:18 43:7 | look [5] 19:11 25:2 | 25:2 |
| 15:3 | 19:9 19:14 37:5 | January [13] 1:19 | 31:15 35:18 35:21 | 35:21 |
| goodness [1] 16:18 | hospitals [1] 6:17 | 10:25 11:2 11:25 | looked [1] 25:13 | |
| graduate [1] 5:14 | hour [2] 3:19 3:19 | 13:14 18:10 18:25 | looking [1] 38:17 | 38:17 |
| GROUP [1] 1:12 | HPI [1] 11:12 | 29:23 29:24 33:25 | looks [1] 9:25 | |
| growing [1] 18:3 | huh-uh [2] 17:3 17:17 | 38:18 38:20 43:23 | lump [6] 12:2 17:7 | 17:7 |
| growth [1] 35:6 | Hurley [1] 37:15 | JUDGE [1] 1:14 | 20:8 34:4 34:11 | 34:11 |
| guess [7] 12:4 14:2 | Hurley's [1] 37:11 | July [1] 23:2 | 35:16 | |
| 16:14 25:9 32:22 | HUSBAND [1] 1:7 | -K- | lumps [1] 36:17 | |
| 39:14 41:21 | -I- | keep [2] 8:18 9:2 | lung [1] 35:19 | |
| guidelines [1] 10:15 | idea [3] 7:19 15:11 | keeping [2] 9:1 | lymphoma [1] 36:21 | 36:21 |
| Guthrie [3] 13:9 | 35:4 | 9:5 | -M- | |
| 13:10 15:22 | identification [1] 22:24 | Kelley [24] 1:25 2:4 | M [7] 1:15 1:20 | 1:20 |
| guys [2] 19:12 28:15 | illness [2] 11:13 20:7 | 3:4 3:5 3:24 | 1:29 2:3 3:1 | 3:1 |
| -H- | importance [1] 14:23 | 18:12 18:16 21:9 | 4:18 43:7 | |
| H [1] 1:14 | important [3] 25:19 | 23:18 26:7 29:12 | M.D [6] 1:15 1:20 | 1:20 |
| habits [1] 13:20 | 40:3 40:5 | 30:12 31:5 31:20 | 2:3 3:1 4:18 | 4:18 |
| half [1] 3:19 | impossible [1] 16:2 | 32:14 33:2 37:19 | 43:7 | |
| Hall [34] 1:3 1:6 | inaccurate [1] 25:19 | 37:22 38:12 39:4 | Mahady-Smith [3] 1:29 | 1:29 |
| 3:8 3:8 3:10 | include [2] 9:3 19:2 | 39:12 40:24 41:10 | 3:21 7:7 | |
| 7:8 7:8 7:23 | included [1] 24:12 | Kentucky [2] 5:8 | maintenance [1] 10:16 | 10:16 |
| 11:4 11:21 11:25 | increased [5] 12:3 | 5:12 | malignancy [2] 20:24 | 20:24 |
| 15:9 16:1 21:24 | 17:8 20:16 20:16 | kidney [1] 35:19 | 41:23 | |
| 24:7 27:19 28:13 | 34:6 | kind [1] 8:20 | malignant [19] 16:18 | 16:18 |
| 29:10 29:22 30:5 | independent [1] 40:18 | kinds [1] 23:24 | 16:19 18:1 18:2 | 18:2 |
| 30:9 30:22 32:1 | indicate [2] 17:4 | knew [3] 17:25 30:9 | 19:17 20:2 20:18 | 20:18 |
| 33:12 33:18 33:18 | 36:7 | 34:2 | 21:7 24:9 25:9 | 25:9 |
| 34:2 34:15 34:21 | indicated [2] 25:16 | knowledge [1] 38:16 | 25:10 26:19 30:21 | 30:21 |
| 34:25 35:24 39:22 | 39:21 | -L- | 32:17 34:16 34:20 | 34:20 |
| 41:5 41:6 | indicating [2] 17:20 | lab [1] 19:4 | 35:13 35:25 36:4 | 36:4 |
| Hall's [4] 17:23 27:7 | 38:21 | lack [1] 13:20 | man [1] 8:1 | |
| 30:1 38:16 | indirectly [1] 43:18 | last [1] 13:18 | margins [1] 32:20 | 32:20 |
| hand [1] 43:22 | INDIVIDUALLY [1] 1:3 | LAW [1] 1:3 | mark [3] 10:2 17:18 | 17:18 |
| hard [1] 20:20 | information [24] 4:4 | lawyer [1] 3:6 | 18:12 | |
| Harrisburg [1] 3:6 | 8:21 10:19 11:16 | lead [1] 17:15 | marked [4] 2:11 10:6 | 10:6 |
| hate [1] 21:11 | 11:17 14:23 15:5 | learn [1] 8:24 | 18:14 22:24 | |
| Health [1] 6:25 | 15:13 15:21 16:13 | | mass [1] 35:4 | |
| heard [2] 29:20 35:24 | | | materials [1] 22:18 | 22:18 |
| held [1] 36:23 | | | matter [1] 25:24 | |

Multi-Page™

physique - simply
JAMES M. CHICKLO, M.D.

| | | | | | | | |
|-------------------------------|--|--|--|----------------------------------|--------------------------------|--|--|
| physique [1] 8:1 | | | | registry [2] 37:1 | 7:5 | | |
| place [2] 1:20 43:14 | | | | 37:4 | rid [1] 8:14 | | |
| placed [1] 15:13 | | | | regular [2] 16:7 16:8 | right [19] 10:4 10:19 | | |
| PLAINTIFF [2] 1:8 | | | | relationship [3] 34:24 | 10:23 11:1 12:25 | | |
| 1:30 | | | | 36:1 36:3 | 14:8 18:6 18:18 | | |
| PMH [2] 11:14 26:17 | | | | relative [2] 43:15 | 19:7 19:19 19:24 | | |
| point [1] 27:18 | | | | 43:16 | 20:4 20:4 20:11 | | |
| practice [9] 4:17 | | | | remember [8] 8:2 | 24:14 24:14 39:25 | | |
| 4:19 4:21 6:6 | | | | 16:3 20:23 21:7 | 40:4 40:22 | | |
| 7:1 8:15 9:12 | | | | 21:15 21:18 27:17 | | | |
| 16:8 23:24 | | | | 28:10 | routinely [1] 14:4 | | |
| practiced [1] 5:1 | | | | remembered [1] 7:25 | runs [1] 6:23 | | |
| practicing [1] 5:2 | | | | removal [1] 22:2 | | | |
| pre-op [1] 18:11 | | | | removed [2] 29:9 | | | |
| preferably [1] 19:15 | | | | 38:22 | | | |
| prepared [1] 18:20 | | | | rephrase [1] 3:13 | | | |
| present [3] 11:12 20:7 | | | | report [29] 20:6 22:5 | | | |
| 34:5 | | | | 22:9 22:10 22:14 | S [3] 1:17 43:4 | | |
| presume [6] 15:1 | | | | 24:21 28:17 29:8 | 43:24 | | |
| 20:5 24:11 26:17 | | | | 30:25 31:3 31:23 | S-T-A-T-L-E-R [1] 13:19 | | |
| 36:8 36:15 | | | | 32:2 32:7 32:10 | saw [9] 8:2 11:5 | | |
| previous [6] 10:6 | | | | 32:16 32:20 33:12 | 23:2 29:1 29:22 | | |
| 12:4 17:23 21:21 | | | | 36:9 36:11 36:12 | 29:23 30:18 33:12 | | |
| 24:16 40:6 | | | | 37:16 37:16 37:21 | 34:15 | | |
| previously [1] 7:19 | | | | 37:25 38:1 38:3 | says [14] 10:25 12:11 | | |
| primary [2] 32:21 | | | | 38:7 41:19 41:24 | 12:16 12:18 12:19 | | |
| 35:15 | | | | reported [3] 25:23 | 12:24 13:3 18:9 | | |
| privileges [2] 6:17 | | | | 36:4 37:17 | 20:7 23:12 23:15 | | |
| 7:4 | | | | Reporter [1] 43:12 | 26:17 26:19 28:23 | | |
| problem [2] 21:14 | | | | Reporter-Notary [3] 43:25 | scapular [1] 24:8 | | |
| 27:16 | | | | 1:18 43:11 | school [7] 5:5 5:7 | | |
| problems [1] 40:6 | | | | represent [2] 3:6 | 5:15 5:19 8:5 | | |
| procedure [2] 16:7 | | | | 7:8 | 8:19 8:23 | | |
| 19:14 | | | | REPRESENTATIVE [1] 1:4 | scope [1] 35:20 | | |
| procedures [1] 10:15 | | | | request [3] 16:12 17:23 | second [3] 23:17 24:6 | | |
| process [1] 38:2 | | | | 18:3 | 27:4 | | |
| produced [2] 2:11 | | | | require [1] 36:20 | secretaries [1] 9:20 | | |
| 18:14 | | | | required [1] 40:9 | secretary [8] 12:7 | | |
| professional [1] 4:5 | | | | requirement [1] 9:6 | 12:8 13:4 13:6 | | |
| proper [1] 8:7 | | | | requires [1] 36:21 | 13:13 15:14 19:7 | | |
| properly [1] 41:22 | | | | resection [1] 26:20 | 25:23 | | |
| prove [1] 31:16 | | | | residency [6] 5:9 | secretary's [2] 12:9 | | |
| provide [1] 29:4 | | | | 5:17 5:20 5:25 | 13:12 | | |
| provided [3] 32:2 | | | | 6:2 6:5 | section [1] 32:10 | | |
| 32:2 33:16 | | | | resident [1] 5:11 | see [19] 14:1 15:9 | | |
| public [5] 1:18 16:16 | | | | respect [1] 31:18 | 16:9 21:12 21:24 | | |
| 43:4 43:11 | | | | rest [1] 13:23 | 22:2 22:14 22:18 | | |
| purpose [1] 11:24 | | | | result [3] 28:25 29:1 | 23:10 24:9 25:2 | | |
| purposes [1] 22:24 | | | | 29:2 | 27:3 27:12 27:13 | | |
| put [8] 8:16 8:21 | | | | resume [1] 4:5 | 28:12 28:25 35:2 | | |
| 10:19 13:7 14:12 | | | | retain [1] 8:11 | 35:17 35:22 | | |
| 15:24 15:24 34:10 | | | | retention [1] 8:7 | seeing [2] 11:25 41:8 | | |
| puts [1] 35:10 | | | | retrospect [1] 35:8 | send [2] 16:13 24:21 | | |
| | | | | revealed [4] 23:9 | sent [4] 25:6 28:16 | | |
| | | | | 24:8 25:10 41:23 | 28:23 28:24 | | |
| | | | | review [4] 19:9 23:6 | service [2] 5:9 6:1 | | |
| | | | | 32:23 40:18 | set [2] 29:21 43:22 | | |
| | | | | reviewed [3] 24:2 | sheet [6] 9:18 11:5 | | |
| | | | | 30:1 39:15 | 18:21 31:17 34:4 | | |
| | | | | reviewing [2] 23:24 | 43:14 | | |
| | | | | 32:10 | sheets [1] 9:3 | | |
| | | | | revoked [2] 7:2 | short [1] 8:1 | | |
| | | | | | show [2] 9:22 30:25 | | |
| | | | | | showed [3] 32:21 33:13 | | |
| | | | | | side [1] 12:3 | | |
| | | | | | simply [3] 26:21 29:4 | | |
| | | | | | 36:16 | | |

Multi-Page™

year - yourself
JAMES M. CHICKLO, M.D.

| -Y- | | | | | |
|---------------------|-------|-------|--|--|--|
| year [3] | 5:14 | 8:14 | | | |
| 28:19 | | | | | |
| years [14] | 4:23 | 5:2 | | | |
| 5:9 | 5:10 | 5:10 | | | |
| 8:12 | 8:12 | 8:16 | | | |
| 9:4 | 9:12 | 14:20 | | | |
| 14:22 | 15:1 | 37:8 | | | |
| Yep [4] | 9:13 | 11:2 | | | |
| 20:10 | 24:1 | | | | |
| York [1] | 37:6 | | | | |
| yourself [1] | 10:11 | | | | |

EXHIBIT

DATE 1-15-99
 AGE 43
 CF. Charlesworth

Charlesworth-3
1-9-02 RS

Tommy Hall
 PATIENT'S NAME

C/O lump - base (L) neck x 5 weeks - increased in size
 I.P.I. - tender - only when moved around. - was a shellfish poison
size 1 cm to 5 cm growth acc to PT. -

P.M.H.

Allergies 0

Medications IRON Med.

Surgery Spinal Sq x 2 1989-1993

Note - ER Exc. (1993) Dr. Hine
one BACK -

ROS & OTHER C/O

Childbirth Complicated 0 Uncomplicated 0

FAMILY HISTORY

D - Dad - Aunt
C - grandmother (breast)
TB - 0
H - grandmother (CVA)

Physical Examination

EARS

Canals OK
 External 0

Weber
 ML L R

NOSE

Septum ML Defl. 1 R
 Valves NL Wide L R Closed L R
 Turbinates 0

Discharge Bilat R L
 External Dorsal Hump Bridge to L 0 Bridge to R 0

Immunization & Childhood Diseases

Complic 0 Uncomplic 0

Medical Illnesses Anemia

Bleeding Tendencies 0

Hospitalizations (Excl. Sgy.) 0

Trauma Neck Trauma x 2 -

HABITS

Tobacco

Yes X No 0

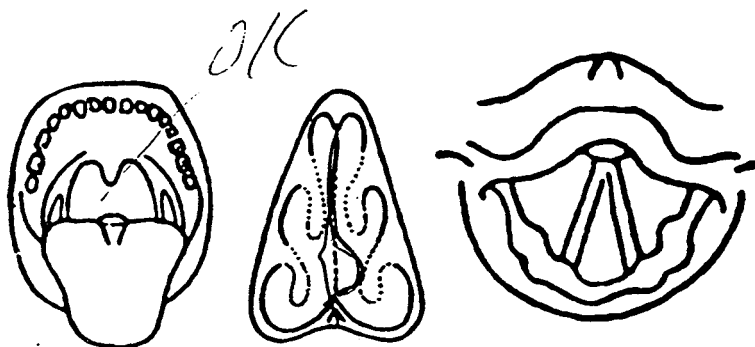
Amt 1 pkg. d.

ETOH

Yes 0 No X

Amt 0

Rinne Left AC BC P.N.O. Motion Valsalva (Motion)
 Right AC BC L 0 R 0 L 0 R 0



COPY 9

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY :
AND AS THE REPRESENTATIVE :
AND ADMINISTRATRIX OF THE :
ESTATE OF TOMMY HALL, :
DECEASED, HER HUSBAND, :
PLAINTIFF :
:
:
V : CIVIL ACTION
:
:
:
CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE SOCIETY, :
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: PAULA STATLER

TAKEN BY: DEFENDANTS

BEFORE: MARIA N. O'DONNELL, RPR
NOTARY PUBLIC

DATE: MARCH 22, 2002, 9:45 A.M.

PLACE: 1039 WAYNE AVENUE
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

PEDERSEN & PEDERSEN
BY: STEPHEN R. PEDERSEN, ESQUIRE
FOR - PLAINTIFFS

MCNEES, WALLACE & NURICK
BY: MICHAEL R. KELLEY, ESQUIRE
FOR - DEFENDANT



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PAULA STATLER
MARCH 22, 2002

Page 2

1 WITNESSES

2 NAME EXAMINATION

3 PAULA STATLER

4 BY: MR. KELLEY 3

5 BY: MR. PEDERSEN 8

6

7

8

9

10 EXHIBITS

11 DEPOSITION EXHIBIT NO. PRODUCED AND MARKED

12 1. DOCUMENT 4

13

14

15

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17

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19

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21

22

23

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Page 3

1 STIPULATION

2 It is hereby stipulated by and between counsel

3 for the respective parties that reading, signing, sealing,

4 certification and filing are hereby waived; and that all

5 objections except as to the form of the question are

6 reserved to the time of trial.

7

8 PAULA STATLER, called as a witness, being duly

9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. KELLEY:

12 Q Good morning.

13 A Good morning.

14 Q Again, my name is Michael Kelley. I represent

15 Cuna Mutual Insurance in a lawsuit that's been filed by the

16 estate of Tommy Hall and his wife, Nancy Hall.

17 We're here today to take your deposition and it's

18 really limited to some of the medical records that Dr.

19 Chicklo has.

20 A Okay.

21 Q I see you have got some of those right in front

22 of you here?

23 A Uh-huh.

24 Q Would you just state your full name for record,

25 please?

Page 4

1 A My name is Paula Noreen Statler.

2 Q Where are you employed?

3 A At Dr. James M. Chicklo.

4 Q How long have you been employed by Dr. Chicklo?

5 A Twenty-eight years.

6 Q Your name came up in the deposition of Dr.

7 Chicklo that we took some several weeks ago when we were

8 reviewing some of the medical records that Dr. Chicklo had,

9 and he mentioned that you would have been the person who

10 actually put some of the information down on the form and

11 that's the reason we're here to take your deposition today.

12 A Okay. Sure. Okay.

13 MR. KELLEY: I see you have got in front of you I

14 think the very document I am interested in looking at.

15 We're going to mark that as Statler 1 to your

16 deposition.

17 (Document produced and marked Statler Exhibit

18 Number 1.)

19 BY MR. KELLEY:

20 Q Looking at either the one we have marked or your

21 original there.

22 A Right.

23 Q Can you explain to us what that document is?

24 A This is a document that whenever a patient comes

25 into the office initially for their first office visit,

Page 5

1 these are the questions that we -- that Dr. Chicklo has

2 instructed to ask them prior to him sitting down with the

3 patient and then he goes over what I have written down and

4 then he adds to it.

5 Q Does the patient ever fill this form out him or

6 herself?

7 A No.

8 Q Are you always the one that fills it out?

9 A 90 percent of the time, yes.

10 Q Okay. If you don't fill it out, who does?

11 A One of the other medical assistants.

12 Q In this particular case, do you recognize your

13 handwriting on this document?

14 A Yes, I do. Yes.

15 Q Can you identify for us specifically what parts

16 of this contain your handwriting?

17 A Okay. Where it asks for allergies, medications,

18 surgeries done, family history, medical illnesses, bleeding

19 tendencies, and their habits.

20 Q Okay. The information at the top regarding the

21 complaints?

22 A Okay.

23 Q That is yours?

24 A Yes, on the first line I will ask initially why

25 the patient is here.

Page 10

1 morning.
 2 Q Did you see a pathology report in there?
 3 A This would be a pathology report.
 4 Q Now, that's the left node pathology report after
 5 the visit, isn't it?
 6 A Oh, okay. Yes.
 7 Q Do you remember seeing a 1993 pathology report
 8 relating to that '93 mole?
 9 A No, I don't. No, I don't.
 10 Q Are you familiar with pathology reports?
 11 A As far as --
 12 Q Reading them with respect to moles?
 13 A Reading them and understanding, yes, I can read
 14 what the report is.
 15 Q If the pathology report had indicated dysplastic
 16 nevus for the mole that was removed in '93, what would that
 17 indicate to you?
 18 MR. KELLEY: Objection. Lack of foundation. Go
 19 ahead, you can answer.
 20 BY MR. PEDERSEN:
 21 Q Let me lay a little more foundation.
 22 A Okay.
 23 Q Do you review pathology reports as part of your
 24 work with Dr. Enders?
 25 A With Dr. Chicklo?

Page 11

1 Q Dr. Chicklo, I am sorry.
 2 A No, I don't.
 3 Q Have you had any training or experience in
 4 reading or reviewing pathology reports?
 5 A No, I haven't.
 6 Q Do you have any familiarity with the term
 7 dysplastic nevus?
 8 A Only what Dr. Chicklo has explained to me.
 9 Q What has Dr. Chicklo explained with respect to a
 10 dysplastic nevus finding?
 11 MR. KELLEY: I will just object to that on the
 12 basis of relevance and still a lack of a foundation for this
 13 witness.
 14 You can answer.
 15 THE WITNESS: Okay. Just that the cells aren't
 16 normal, but not always malignant. That was -- that would be
 17 my understanding of it.
 18 BY MR. PEDERSEN:
 19 Q Have you seen pathology reports with findings of
 20 dysplastic nevus in your practice here?
 21 A I would imagine, but I couldn't say specifically.
 22 MR. PEDERSEN: I don't have any other questions.
 23 MR. KELLEY: That's it.
 24 (Whereupon, the deposition was concluded at
 25 10:00 a.m.)

Page 12

1 COUNTY OF DAUPHIN :
 2 : SS
 3 COMMONWEALTH OF PENNSYLVANIA :
 4 I, Maria N. O'Donnell, a Notary Public, authorized to
 5 administer oaths within and for the Commonwealth of
 6 Pennsylvania, do hereby certify that the foregoing is the
 7 testimony of PAULA STATLER.
 8 I further certify that before the taking of said
 9 deposition, the witness was duly sworn; that the questions
 10 and answers were taken down stenographically by the said
 11 Reporter-Notary Public, and afterwards reduced to
 12 typewriting under the direction of the said Reporter.
 13 I further certify the said deposition was taken at
 14 the time and place specified in the caption sheet hereof.
 15 I further certify that I am not a relative or
 16 employee or attorney or counsel to any of the parties, or a
 17 relative or employee of such attorney or counsel, or
 18 financially interested directly or indirectly in this
 19 action.
 20 I further certify the said deposition constitutes
 21 a true record of the testimony given by the said witness.
 22 IN WITNESS WHEREOF, I have hereunto set my hand
 23 this 22ND day of MARCH, 2002.
 24 _____
 25 Maria N. O'Donnell, RPR
 Notary Public

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'93 - interested
PAULA STATLER

| | | | |
|--|--|---|---|
| <p>-'-</p> | <p>12:17 authorized [1] 12:4 AVENUE [1] 1:21</p> | <p>directly [2] 7:9 12:18 DISTRICT [2] 1:1 1:2</p> | <p>first [3] 4:25 5:24 7:13</p> |
| <p>'93 [2] 10:8 10:16 '99 [1] 8:10</p> | <p>-B-</p> | <p>doctor [2] 9:4 9:9 document [7] 2:12 4:14 4:17 4:23 4:24 5:13 8:6</p> | <p>follows [1] 3:9 foregoing [1] 12:6 form [5] 3:5 4:10 5:5 7:13 9:14</p> |
| <p>-1-</p> <p>1 [3] 2:12 4:15 4:18 1039 [1] 1:21 1989 [1] 7:21 1993 [5] 6:22 7:21 7:25 9:23 10:7 1:01-CV-1265 [1] 1:11</p> | <p>basis [1] 11:12 between [1] 3:2 bleeding [1] 5:18</p> <p>-C-</p> <p>CA [2] 6:6 6:22 cancerous [1] 7:24 caption [1] 12:14 case [1] 5:12 cells [1] 11:15 certification [1] 3:4 certify [5] 12:6 12:8 12:13 12:15 12:20 CHAMBERSBURG [1] 1:22 Charlesworth [6] 9:6 9:7 9:12 9:16 9:18 9:20 chart [1] 9:25 Chicklo [13] 3:19 4:3 4:4 4:7 4:8 5:1 6:12 8:1 9:16 10:25 11:1 11:8 11:9 Chicklo's [2] 6:20 6:21 CIVIL [1] 1:10 coming [2] 9:16 9:20 Commonwealth [2] 12:3 12:5 complaints [1] 5:21 concluded [1] 11:24 constitutes [1] 12:20 contain [1] 5:16 counsel [3] 3:2 12:16 12:17 COUNTY [1] 12:1 COURT [1] 1:1 Cuna [3] 1:13 1:13 3:15</p> | <p>done [1] 5:18 down [7] 4:10 5:2 5:3 7:12 7:14 7:22 12:10 Dr [25] 3:18 4:3 4:4 4:6 4:8 5:1 6:12 6:20 6:21 7:22 7:23 7:25 8:1 9:6 9:7 9:11 9:16 9:16 9:17 9:20 10:24 10:25 11:1 11:8 11:9 duly [2] 3:8 12:9 dysplastic [4] 10:15 11:7 11:10 11:20</p> | <p>foundation [3] 10:18 10:21 11:12 frankly [1] 6:4 front [2] 3:21 4:13 full [1] 3:24</p> <p>-G-</p> <p>gathered [1] 8:7 given [1] 12:21 goes [1] 5:3 Good [2] 3:12 3:13 GROUP [1] 1:13 Guthrie [2] 6:22 7:25</p> |
| <p>-2-</p> <p>2002 [2] 1:20 12:23 22 [1] 1:20 22ND [1] 12:23</p> | <p>-3-</p> <p>3 [1] 2:4</p> | <p>-E-</p> <p>either [1] 4:20 employed [2] 4:2 4:4 employee [2] 12:16 12:17 Enders [1] 10:24 ESQUIRE [2] 1:25 1:28 estate [2] 1:6 3:16 EXAMINATION [2] 2:2 3:10 Exc [1] 6:8 except [1] 3:5 excised [2] 6:22 7:25 Exhibit [2] 2:11 4:17 EXHIBITS [1] 2:10 experience [1] 11:3 explain [2] 4:23 7:13 explained [2] 11:8 11:9</p> | <p>-H-</p> <p>H [1] 1:15 habits [1] 5:19 Hall [11] 1:3 1:6 3:16 3:16 8:12 8:12 8:18 8:25 9:1 9:2 9:19 hand [3] 12:22 handwriting [4] 5:13 5:16 6:15 6:17 hereby [3] 3:2 3:4 12:6 hereof [1] 12:14 hereunto [1] 12:22 herself [1] 5:6 himself [1] 9:3 history [1] 5:18 HUSBAND [1] 1:7</p> |
| <p>-3-</p> <p>3 [1] 2:4</p> | <p>-4-</p> <p>4 [1] 2:12</p> | <p>-F-</p> <p>familiar [1] 10:10 familiarity [1] 11:6 family [3] 5:18 7:4 8:12 far [1] 10:11 filed [1] 3:15 filing [1] 3:4 fill [2] 5:5 5:10 filled [1] 9:13 fills [1] 5:8 financially [1] 12:18 finding [1] 11:10 findings [1] 11:19</p> | <p>-I-</p> <p>identify [1] 5:15 illnesses [1] 5:18 imagine [1] 11:21 indicate [1] 10:17 indicated [1] 10:15 indirectly [1] 12:18 INDIVIDUALLY [1] 1:3 information [10] 4:10 5:20 6:6 6:13 6:24 7:6 8:7 8:13 9:1 9:19 instructed [1] 5:2 Insurance [2] 1:14 3:15 interested [4] 4:14 6:4 6:5 12:18</p> |
| <p>-4-</p> <p>4 [1] 2:12</p> | <p>-D-</p> <p>date [2] 1:20 8:6 dated [1] 8:8 dates [1] 7:23 DAUPHIN [1] 12:1 DECEASED [1] 1:7 DEFENDANT [1] 1:29 DEFENDANTS [2] 1:15 1:17 deposition [10] 1:16 2:11 3:17 4:6 4:11 4:16 11:24 12:9 12:13 12:20 direction [1] 12:12</p> | <p>-8-</p> <p>8 [1] 2:5</p> | <p>-J-</p> |
| <p>-8-</p> <p>8 [1] 2:5</p> | <p>-9-</p> <p>90 [1] 5:9 9:45 [1] 1:20</p> | <p>-A-</p> <p>a.m [2] 1:20 11:25 abbreviations [1] 7:14 action [2] 1:10 12:19 added [1] 6:13 adds [1] 5:4 administer [1] 12:5 ADMINISTRATRIX [1] 1:5 afterwards [1] 12:11 Again [1] 3:14 ago [1] 4:7 agree [1] 9:15 ahead [2] 8:17 10:19 allergies [1] 5:17 always [2] 5:8 11:16 answer [2] 10:19 11:14 answers [1] 12:10 APPEARANCES [1] 1:23 asks [1] 5:17 assistants [1] 5:11 assume [2] 8:14 9:2 attention [1] 6:1 attorney [2] 12:16</p> | <p>-9-</p> |
| <p>-9-</p> <p>90 [1] 5:9 9:45 [1] 1:20</p> | <p>-A-</p> <p>a.m [2] 1:20 11:25 abbreviations [1] 7:14 action [2] 1:10 12:19 added [1] 6:13 adds [1] 5:4 administer [1] 12:5 ADMINISTRATRIX [1] 1:5 afterwards [1] 12:11 Again [1] 3:14 ago [1] 4:7 agree [1] 9:15 ahead [2] 8:17 10:19 allergies [1] 5:17 always [2] 5:8 11:16 answer [2] 10:19 11:14 answers [1] 12:10 APPEARANCES [1] 1:23 asks [1] 5:17 assistants [1] 5:11 assume [2] 8:14 9:2 attention [1] 6:1 attorney [2] 12:16</p> | <p>-A-</p> | <p>-J-</p> |

Multi-Page™

today - years
PAULA STATLER

12:21
today [4] 3:17 4:11
 6:23 8:20
Tommy [2] 1:6
 3:16
took [1] 4:7
top [1] 5:20
training [1] 11:3
trial [1] 3:6
true [1] 12:21
turning [1] 6:1
Twenty-eight [1] 4:5
twice [1] 7:21
typewriting [1] 12:12

-U-

under [3] 7:16 7:23
 12:12
UNITED [1] 1:1
up [1] 4:6

-V-

V [1] 1:11
visit [2] 4:25 10:5

-W-

waived [1] 3:4
WALLACE [1] 1:27
WAYNE [1] 1:21
weeks [1] 4:7
WHEREOF [1] 12:22
wife [5] 3:16 7:2
 8:21 8:22 9:20
within [1] 12:5
witness [6] 3:8
 11:13 11:15 12:9
 12:21 12:22
WITNESSES [1] 2:1
writing [3] 6:20 6:21
 6:21
written [2] 5:3 7:14
wrote [3] 7:22 8:2
 9:13

-Y-

years [1] 4:5

ORIGINAL *10*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY:
AND AS THE :
REPRESENTATIVE AND :
ADMINISTRATRIX OF THE :
ESTATE OF TOMMY HALL, :
DECEASED, HER HUSBAND, :
PLAINTIFF :

V : 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE :
SOCIETY, :

DEFENDANTS : JUDGE SYLVIA H. RAMBO

VIDEO DEPOSITION OF: NANCY HALL

TAKEN BY: DEFENDANTS

BEFORE: BOBBI JO HAHN, RPR
NOTARY PUBLIC

DATE: MARCH 19, 2002
9:08 A.M.

PLACE: PEDERSEN & PEDERSEN
214 SENATE AVENUE
CAMP HILL, PENNSYLVANIA

APPEARANCES ON NEXT PAGE



1 or being a melanoma?

2 A No.

3 Q What I said was correct? I think she
4 misunderstood. I just want to make sure we're clear
5 about that. Prior to February 11, 1999, is it true
6 that neither you nor your husband had any knowledge
7 about any moles on his body being cancerous, malignant
8 or a melanoma?

9 A Yes.

10 Q Who was it who first told you that any moles
11 on your husband's body were malignant, cancerous or a
12 melanoma?

13 A I don't remember.

14 Q Was it a doctor?

15 A I'm not sure.

16 Q So you don't have any recollection about who
17 it was or even whether it was a doctor who told you
18 that; is that correct?

19 A I'm not sure. I don't know.

20 Q Do you know which doctors your husband saw
21 with regard to the lump on his neck?

22 A Yes.

23 Q And who were those doctors?

24 A Dr. Chicklo.

25 Q Dr. Chicklo?

1 A Chicklo, yes.

2 Q Anyone else?

3 A No, Dr. Chicklo did the surgery.

4 Q Okay. As you sit here today, do you know the
5 names of any other doctors that your husband saw with
6 regard to the lump on his neck?

7 A I'm not sure.

8 Q Do you know the name of Dr. Charlesworth?

9 A Yes.

10 Q Did your husband go to see Dr. Charlesworth
11 at any time about the lump on his neck?

12 A I don't know if he went to see him first.

13 Q Did you accompany your husband to any of his
14 doctors' visits?

15 A Yes.

16 Q Did you ever accompany him on a doctor's
17 visit to Dr. Charlesworth?

18 A Yes.

19 Q Do you remember how many times he saw Dr.
20 Charlesworth?

21 A The time you're talking before or after?

22 Q At any time.

23 A Three or four visits.

24 Q Did you accompany your husband on all of
25 those visits?

1 A Yes.

2 Q And you remember the name of Dr. Chicklo,
3 right?

4 A Yes.

5 Q Did you also attend any visits your husband
6 had with Dr. Chicklo?

7 A No.

8 Q Are you certain of that? You seem -- your
9 answer was very self-assured. Are you certain that you
10 did not attend any of those visits?

11 A Yes.

12 Q How about a Dr. Cashdollar, do you know who
13 Dr. Cashdollar is?

14 A Yes.

15 Q Did your husband see Dr. Cashdollar with
16 regard to the lump on his neck?

17 A Yes.

18 Q Did you attend any of those visits with him?

19 A Yes.

20 Q Do you know how many times your husband
21 visited Dr. Cashdollar?

22 A In his office or during treatment?

23 Q Anywhere.

24 A We're talking each cancer treatment. I would
25 have to say 15 visits or more.

1 Q Dr. Cashdollar --

2 A Yes.

3 Q -- was the physician who administered the --
4 the treatments to your husband for his cancer?

5 A Yes.

6 Q So he went to see Dr. Cashdollar a lot?

7 A Yes.

8 Q Did you go with him to all of his visits with
9 Dr. Cashdollar?

10 A No.

11 Q Did you go with him to most of them?

12 A Yes.

13 Q Did you go with him for the first visit with
14 Dr. Cashdollar?

15 A Yes.

16 Q Dr. Enders, do you know Dr. Enders?

17 A Yes.

18 Q Did your husband see Dr. Enders for any
19 reason?

20 A Yes.

21 Q Did you accompany your husband to any of the
22 visits with Dr. Enders?

23 A Yes.

24 Q How many times did your husband see Dr.
25 Enders?

1 A Three or more.

2 Q Did you attend for all of those visits?

3 A No.

4 Q Did you attend for any of them?

5 A Yes.

6 Q Did you attend for the first visit with Dr.

7 Enders?

8 A I don't remember.

9 Q And the last doctor that I wanted to ask you
10 about is Dr. Sharfman. Do you know a Dr. Sharfman?

11 A NIH?

12 Q I believe he's down in Maryland.

13 A Yes. No, I never met him.

14 Q Now, we talked about Dr. Charlesworth,
15 Chicklo, Cashdollar, Enders and Sharfman. I wanted to
16 ask you if the discussion of any of those doctors'
17 names jogged your recollection of who it was that first
18 told you that any of the moles on your husband's body
19 were cancerous.

20 A I'm not sure.

21 Q So even with the discussion of those doctors,
22 you're still not certain; is that right?

23 A No.

24 Q Now, I understand your testimony that it
25 wasn't until at least as of February 11, 1999 or

COPY //

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW
AS THE REPRESENTATIVE AND :
ADMINISTRATRIX OF THE ESTATE :
OF TOMMY HALL, DECEASED, HER :
HUSBAND, :
PLAINTIFF :
V : 1:01-CV-1265
CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE SOCIETY, :
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: MICHAEL R. CASHDOLLAR, M.D.
TAKEN BY: DEFENDANTS
BEFORE: PAMELA S. SULLIVAN,
REPORTER-NOTARY PUBLIC
DATE: FEBRUARY 27, 2002, 10:08 A.M.
PLACE: OFFICE OF DR. CASHDOLLAR
120 NORTH 7TH STREET
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

MCNEES WALLACE & NURICK, LLC
BY: MICHAEL R. KELLEY, ESQUIRE

FOR - DEFENDANTS

PEDERSEN & PEDERSEN
BY: STEPHEN R. PEDERSEN, ESQUIRE
CATHERINE M. MAHADY-SMITH, ESQUIRE

FOR - PLAINTIFF



Multi-Page™

MICHAEL R. CASHDOLLAR, M.D.

FEBRUARY 27, 2002

Page 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW
AS THE REPRESENTATIVE AND :
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CATHERINE M. MAHADY-SMITH, ESQUIRE

FOR - PLAINTIFF

1 MICHAEL R. CASHDOLLAR, M.D., called as a witness,
2 being duly sworn, testified as follows:

3 MR. KELLEY: Usual stipulations here?

4 MR. PEDERSEN: That's fine, yes.

5 STIPULATION

6 It is hereby stipulated by and between counsel
7 for the respective parties that sealing, certification and
8 filing are hereby waived; and that all objections except as
9 to the form of the question are reserved to the time of
10 trial.

11 EXAMINATION

12 BY MR. KELLEY:

13 Q Good morning, Doctor.

14 A Good morning.

15 Q As I just introduced myself to you a few moments
16 ago, my name is Mike Kelley.

17 A Okay.

18 Q I'm a lawyer, and I'm here representing CUNA
19 Mutual Insurance Company in an action that's been brought by
20 Mrs. Nancy Hall and the estate of her late husband, Tommy
21 Hall.

22 We're here today to take your deposition. I
23 presume you've been through depositions before.

24 A Rarely, but yes.

25 Q Well, the purpose of this deposition today is to

Page 2

1 WITNESS
2 NAME EXAMINATION
3 MICHAEL R. CASHDOLLAR, M.D.
4 BY: MR. KELLEY 3, 42
5 BY: MR. PEDERSEN 27, 44
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Page 4

1 seek information about, frankly, some medical records that
2 we have concerning Tommy Hall and to explore the nature of
3 how those records were created and to obtain some background
4 of your treatment of Mr. Hall.
5 A Okay.
6 Q Counsel for Plaintiffs are also here, Steve
7 Pedersen and Catherine Mahady-Smith. Have you met them
8 before?
9 A Yes.
10 Q Have you had any conversations with either of
11 Plaintiff's counsel regarding Mr. Hall in the past?
12 A Yes.
13 Q How many times have you had conversations with
14 them?
15 A Twice.
16 Q How long ago were they?
17 A One week and possibly four. I don't recall.
18 Q So about a week ago, and then maybe a month ago?
19 A Yeah.
20 Q Were they in-person meetings or over the
21 telephone?
22 A In-person.
23 Q Did you meet with them here in your office?
24 A Yes.
25 Q Did you take any notes of the meetings?

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MICHAEL R. CASHDOLLAR, M.D.
FEBRUARY 27, 2002

Page 9

1 January 22nd, 1999?

2 A Yes.

3 Q Now, that operative report is with regard to the

4 adenopathy that was on the neck. Is that correct?

5 A Yes, yes.

6 Q Also in your file, Doctor, is a 2-23-99 record

7 that looks like it's from Dr. Enders. Is that correct?

8 A Yes, yes.

9 Q And you're cc'd on that. Is that right?

10 A Yes.

11 Q And then a colonoscopy report dated March 15,

12 1999?

13 A Yes.

14 Q Again which is prepared by Dr. Enders?

15 A Yes.

16 Q Also in your records -- excuse me, Doctor. Off

17 the record.

18 (Discussion held off the record.)

19 BY MR. KELLEY:

20 Q Also in your records is a document with a name of

21 Dr. David Weinrich on it.

22 A Um-hum.

23 Q Is that correct?

24 A Yes.

25 Q And it seems to be -- I'm looking for a date on

Page 10

1 here, Doctor. Do you know where it would be dated?

2 A Well, that's an admission note. It has admitted

3 date on the left-hand corner.

4 Q Oh, admitted on 9-30-99?

5 A Yeah, yeah.

6 Q And it's a three-page document. Is that correct?

7 A Yes.

8 Q It includes a past history in it as well?

9 A Yes.

10 Q It says, Wide local excision of the left shoulder

11 in 1993. Correct?

12 A Yes.

13 Q And there is an oncology outpatient note that

14 looks like it's prepared by Dr. William Sharfman.

15 A Okay.

16 Q Is that correct?

17 A Yes, yes.

18 Q Dated July 15 of 1999. Also, Doctor, let me show

19 you this document in here. Can you identify that? Tell us

20 when the date of it is and what it is.

21 A Okay, February 18th, 1999. It's a CAT scan

22 evaluation of the chest and abdomen of Tommy Hall.

23 Q Done at Chambersburg Hospital?

24 A Yes.

25 Q That mentions in there a history, does it not?

Page 11

1 A Yes.

2 Q It indicates metastatic carcinoma and history of

3 melanoma?

4 A Um-hum.

5 Q Is that correct?

6 A Um-hum.

7 Q You have to say yes or no.

8 A Yes, yes.

9 Q Was this a document prepared by you or prepared

10 by the hospital?

11 A No. That's prepared by the radiology department

12 of the hospital.

13 MS. MAHADY-SMITH: Let me see that just briefly.

14 MR. KELLEY: Yeah.

15 BY MR. KELLEY:

16 Q The next set of questions, Doctor, you may have

17 to rely upon your documents there. But why don't we get

18 started? And if you need to, we'll simply wait until she's

19 done with it and then continue.

20 A Sure.

21 Q When did you first see Tommy Hall?

22 A That was January. It was 1999. I'd have to look

23 at the exact date there.

24 Q In 1999?

25 A Yes.

Page 12

1 MR. PEDERSEN: I would prefer that he wait and

2 get his records so that we have an accurate --

3 MS. MAHADY-SMITH: I'll look at these, Doctor, at

4 the end of the deposition so we don't hold up the testimony.

5 THE WITNESS: Oh, okay.

6 I saw him on February 17th, 1999.

7 BY MR. KELLEY:

8 Q That was the first time that you saw him?

9 A Yes.

10 Q Who referred Tommy Hall to you?

11 A Dr. James Chicklo.

12 Q Do you know Dr. Chicklo?

13 A Yes, he's an ENT specialist.

14 Q Has he referred other patients to you?

15 A Yes.

16 Q Have you referred patients to him?

17 A Yes.

18 Q How long have you known Dr. Chicklo?

19 A Twenty-two years.

20 Q And your practice is based here in Chambersburg.

21 Is that correct?

22 A Yes, yes.

23 Q And his practice is also based in Chambersburg?

24 A Yes.

25 Q How many times did you actually see Tommy Hall?

| | |
|---|---|
| <p style="text-align: right;">Page 17</p> <p>1 practice, are their policies and procedures that you have in 2 place for the intake of patient medical records and medical 3 histories? 4 A Yes. 5 Q Are they written down? 6 A They might be. There might be a worksheet to 7 collect information. 8 Q Would it only be a nurse who's taking down the 9 information on that back page of that intake form? 10 A Yes. 11 Q What training or instruction does the nurse go 12 through in how to take the information that's contained on 13 that back page? 14 A Basically their nursing experience and things 15 that we derive, you know. We instruct them to particularly 16 pursue certain areas, you know, the areas that the patient 17 is being referred for basically. 18 Q In this particular case, the patient was being 19 referred for what? 20 A He was referred for metastatic melanoma. 21 Q Is the patient's history for having had cancer, 22 is that something that's important to you? 23 A Yes, yes. 24 Q How would a nurse know that that's important 25 information that you're looking for?</p> | <p style="text-align: right;">Page 19</p> <p>1 Mr. Hall demonstrated a left in scapular dermal lesion in 2 1993, pathology revealed a malignant melanoma. Correct? 3 A Correct. 4 Q Where did you obtain the information that you 5 included in this letter about the malignant melanoma back in 6 1993? 7 A That information was obtained from Dr. Chicklo's 8 referral information. In that, he mentions that there was a 9 previous malignant melanoma excised in 1993, and also in the 10 nursing data that was obtained. 11 Q Now, you mentioned that there was -- pathology 12 revealed a malignant melanoma. 13 A Um-hum. 14 Q Did you actually see a pathology report? 15 A At that time, we did not have a pathology report. 16 Q What were you basing your information on then 17 that pathology revealed that? 18 A In his information he mentions twice that the 19 pathology was malignant melanoma. 20 Q In Dr. Chicklo's information? 21 A Yes. 22 Q And you felt comfortable in relying upon that 23 information? 24 A Yes. Well, the information I needed was the 25 lymph gland report, which we had. But that's why we went</p> |
| <p style="text-align: right;">Page 18</p> <p>1 A That's part of the training. Most of these 2 nurses are knowledgeable about what we do, and they would 3 try to retrieve records that would be important for the 4 evaluation. 5 Q Doctor, if you would, I'd like to call your 6 attention to a February 17, 1999, letter that you wrote to 7 James Chicklo. In fact, I'll give that to you there. 8 A Okay. 9 Q Is it fair to say that you drafted or dictated -- 10 oh, do you dictate, or do you write your own letters? 11 A Yes, I dictate. 12 Q Did you dictate that letter at or about the time 13 that you were having the initial meeting with Tommy Hall? 14 A I dictated. I always dictate immediately after 15 the visit. 16 Q Now, in your letter -- this is a report to Dr. 17 Chicklo. Correct? 18 A Um-hum, yes. 19 Q And in your letter you indicate that you had the 20 pleasure of seeing Tommy Hall, a medical oncology 21 consultation, on Wednesday February 17 of '99. Correct? 22 A Um-hum. 23 Q You have to say yes or no. 24 A Yes, I'm sorry. 25 Q That's okay. And you say, As you are well aware,</p> | <p style="text-align: right;">Page 20</p> <p>1 back and retrieved the original. I mean, it was logical. 2 With the lymph gland being involved, he had to have a 3 primary somewhere sometime. 4 Q So the fact that he was diagnosed with metastatic 5 melanoma in 1999 was consistent with him having had a 6 previous melanoma? 7 A It would imply that he had a previous melanoma or 8 a coexisting melanoma somewhere. 9 Q Did you have any conversations with either Mr. or 10 Mrs. Hall during that initial visit about the prior 11 diagnosis of a malignant melanoma back in '93? 12 MS. MAHADY-SMITH: Objection. 13 MR. PEDERSEN: Yeah, objection. There wasn't a 14 prior diagnosis from '93. 15 MR. KELLEY: Let me rephrase the question. I 16 understand the nature of the objection. 17 BY MR. KELLEY: 18 Q Did you have any conversations with Mr. or 19 Mrs. Hall during that initial visit about any previous 20 problems with cancer? 21 A Yes. 22 Q Tell us what you recall about that. 23 A Well, the information was available that he had 24 had a previously documented malignant melanoma from his left 25 scapula excised.</p> |

Page 25

1 A No.

2 Q Other than that initial visit with Mr. Hall and

3 perhaps his wife, do you recall having other meetings with

4 Mr. Hall, other appointments, other visits?

5 A Other clinical visits, yes.

6 Q As best you can recall, was there any discussion

7 that you had with either Mr. or Mrs. Hall about this lesion

8 back in 1993?

9 A No detailed discussions that I recall because he

10 was immediately involved in a lot of therapy and progressive

11 changes.

12 Q Do you know Dr. George Baker?

13 A Yes.

14 Q How do you know Dr. Baker?

15 A He's a family physician in Chambersburg -- he

16 practices in Fayetteville, Pennsylvania.

17 Q How about Dr. James Hurley?

18 A Yes. He's a surgeon, a general surgeon, in

19 Chambersburg.

20 Q Dr. Charlesworth?

21 A Yeah, he's a family practitioner in Chambersburg.

22 Q And of course you know Dr. Enders?

23 A Yes.

24 Q He's in the same building that you're in?

25 A Yes, yes. He's a GI specialist.

Page 26

1 Q How about a Dr. Sharfman?

2 A Dr. Sharfman is an oncology specialist involved

3 in experimental therapies for malignant melanoma

4 predominantly.

5 Q And, Doctor, we sort of got into the substance of

6 your testimony before I went over a little bit of your

7 background. If we could just go back and do that quickly,

8 your area of medical specialty is what?

9 A Medical oncology.

10 Q How long have you been specializing in that?

11 A Twenty-two years.

12 Q Where did you graduate from medical school?

13 A West Virginia University.

14 Q What year?

15 A 1973.

16 Q In which states are you licensed to practice

17 medicine?

18 A Pennsylvania only.

19 Q Are you board certified?

20 A Yes.

21 Q In what?

22 A Medical oncology.

23 Q Do you have any privileges at hospitals?

24 A Privileges at Chambersburg Hospital and

25 Waynesboro Hospital.

Page 27

1 Q On the record, Doctor, I'm going to ask you --

2 because there are some records in your file that I don't

3 believe I have, I'm going to ask you to make a copy of your

4 records and send them to me. And, of course, we'll

5 reimburse you for the copying costs for doing that.

6 And do you have a curriculum vitae, a resume?

7 A Yes.

8 Q I'm going to ask you to make a copy of that and

9 you send that to me as well.

10 A Okay.

11 Q I'll send you a formal request. Then you just

12 tell us how much it costs, and we'll reimburse you for that.

13 All right?

14 A Okay.

15 Q Thank you.

16 MR. PEDERSEN: I'd like to request on the record,

17 Mike, that when you get a copy of that, you make a copy of

18 everything that you receive and send to us.

19 MS. MAHADY-SMITH: And you already have a copy of

20 what CUNA had when they made the decision.

21 MR. PEDERSEN: That's right.

22 MR. KELLEY: That's all the questions I have,

23 Doctor. Mr. Pedersen may have some for you.

24 EXAMINATION

25 BY MR. PEDERSEN:

Page 28

1 Q We get to ask the follow-up questions now. Let

2 me start off by just clarifying some references to time

3 frame.

4 A Okay.

5 Q You first saw -- the first time you ever saw or

6 heard of Tommy Bob Hall was at the time of your February

7 17th, 1999, note.

8 A Yes.

9 Q Isn't that correct?

10 A Yes.

11 Q And after the questions that you were asked this

12 morning, you don't have any information with respect to what

13 Tommy Bob Hall knew in November of '98 when he filled out an

14 insurance application, do you?

15 A No information.

16 Q And it would be inaccurate or a misuse of your

17 records to use your records to state what Tommy Bob Hall

18 knew in November of '98 when he filled out an insurance

19 application, wouldn't it?

20 MR. KELLEY: Objection. Calls for speculation,

21 lack of foundation.

22 BY MR. PEDERSEN:

23 Q Let me ask the question another way, Doctor. How

24 would you categorize an insurance company using your records

25 for the proposition that Tommy Bob Hall lied on an insurance

Page 33

1 A Um-hum. He mentions it twice in his report.
2 Q When you got the March '99 -- in March '99, you
3 received a fax of the pathology report from 1993?
4 A Yes, yes.
5 Q And at that time, you became aware that the
6 statement, pathology revealed a malignant melanoma, was
7 incorrect. Isn't that right?
8 A Yes.
9 Q And any doctor or medically trained person would
10 realize when they got the '93 pathology report that this
11 statement was incorrect?
12 A Yes.
13 MR. KELLEY: Object to the form of the question.
14 Lack of foundation and insufficient information.
15 BY MR. PEDERSEN:
16 Q If you were making important decisions with
17 respect to care and treatment that were relevant to the '93
18 removal of the mole, would you get the '93 pathology report?
19 MR. KELLEY: Object to the form of the question.
20 BY MR. PEDERSEN:
21 Q Prior to treatment?
22 A For completeness, we would like to have the
23 original pathology report. But in this case, it didn't
24 alter the treatment or the evaluation.
25 Q It didn't alter it for you because at the time

Page 34

1 Mr. Hall came under your care he had already received
2 another pathology report --
3 A Yes.
4 Q -- which said metastatic melanoma?
5 A Yes.
6 Q But if an insurance company or a doctor were
7 attempting to find out the diagnosis in '93, they'd look at
8 that '93 pathology report?
9 A Yes.
10 MR. KELLEY: Objection. Lack of foundation, lack
11 of information. On the part of the doctor, it calls for a
12 conclusion which is outside of the scope of this doctor's
13 expertise.
14 BY MR. PEDERSEN:
15 Q Doctor, just to clarify, you're an oncologist, a
16 board certified oncologist?
17 A Yes.
18 Q And you know how cancer is diagnosed?
19 A Yes.
20 Q How it's treated?
21 A Yes.
22 Q And as a doctor, you know what you're looking for
23 to determine whether there was a historic diagnosis of
24 cancer?
25 A Yes.

Page 35

1 Q And that's a pathology report?
2 A Yes.
3 Q You were asked questions about our meeting that
4 we had a week ago and approximately four weeks ago. During
5 any of those meetings, did I give you a single document that
6 you hadn't already seen --
7 A No.
8 Q -- or had in your records?
9 A No.
10 Q We simply reviewed your medical records?
11 A Yes.
12 Q Do you have an understanding as an oncologist as
13 to the -- I guess the word is histological medical
14 information that we now working backwards when you find a
15 metastatic melanoma in a lymph node as it relates to a mole?
16 What's the relationship?
17 A Well, typically, in metastatic melanoma in a
18 lymph gland, it does not originate in a lymph gland. It
19 derives -- it comes from another source, typically a skin
20 source. Although, it could be a GI source.
21 Q If -- I'm sorry. Maybe you weren't done.
22 A No, that's fine.
23 Q If you have a patient that provides a history of
24 a mole removal and now has a lymph node and you have a
25 biopsy of metastatic melanoma, can you reach any conclusions

Page 36

1 or make any thoughts with respect to that mole?
2 A Well, you would --
3 MR. KELLEY: Object to the question. Go ahead,
4 Doctor.
5 THE WITNESS: You would immediately -- it would
6 promote a lot of curiosity about the original skin lesion.
7 It would also promote curiosity about additional skin
8 lesions, new skin lesions.
9 BY MR. PEDERSEN:
10 Q With respect to Mr. Hall, is there any medical
11 significance to the fact that a mole was removed in '93 and
12 now we have a '99 -- or December of '98 appearance of a
13 swollen lymph node and then a biopsy in '99?
14 MR. KELLEY: Object to the form. Go ahead,
15 Doctor.
16 THE WITNESS: The time interval is somewhat
17 prolonged to see a metastatic lesion, but it's possible.
18 Melanomas can do basically anything. So someone questioned
19 the six-year interval between the skin lesion and the -- it
20 gives you more reason to go back and pull up the original
21 skin biopsy.
22 BY MR. PEDERSEN:
23 Q As you sit here today after all the questions and
24 the review of your record, you have no information as to
25 when Tommy Bob Hall first became aware of the relationship

Page 41

1 Mr. Hall's care was obtained from Mr. Hall, from the nurses,
2 review of records, that you didn't obtain information by
3 phone conversation with Dr. Chicklo or any of the other
4 treating doctors in this case?
5 A No, no.
6 MR. KELLEY: You would agree with that, Doctor?
7 THE WITNESS: That I didn't -- are we talking
8 about original information?
9 BY MR. PEDERSEN:
10 Q That's right.
11 A Of those, the only ones that I discussed with any
12 information over the phone was Dr. Sharfman. And that was
13 more treatment decisions.
14 Q And you weren't a witness to the conversation
15 between any other physicians, Dr. Chicklo and Dr.
16 Charlesworth or any of the other doctors?
17 A No.
18 Q Last question, do you have an understanding as to
19 whether or not in a routine practice it's the surgeon who
20 removes the lesion that has a discussion with the patient
21 concerning the pathology of that?
22 A Yes. Either a surgeon or a dermatologist.
23 Q As opposed to an oncologist?
24 A Um-hum.
25 Q And in this case, that would have been Dr.

Page 42

1 Chicklo?
2 A Well, the original skin lesion would have been
3 Hurley.
4 Q Hurley in '93, and then Chicklo in '99.
5 A Chicklo in '99.
6 MR. PEDERSEN: I don't have any other questions.
7 MR. KELLEY: Just a couple of follow-up.
8 EXAMINATION
9 BY MR. KELLEY:
10 Q Now, you mentioned that the only oncology report
11 that you've ever seen regarding that 1993 lesion was the one
12 that you obtained in March of '99. Correct?
13 A Um-hum.
14 MR. PEDERSEN: Objection. It was not an oncology
15 report.
16 BY MR. KELLEY:
17 Q Pathology report, excuse me.
18 A Okay, yes.
19 Q Obtained in March of 1999. Correct?
20 A That's the only one pathology report from the '93
21 skin lesion, yeah.
22 Q That's the only one you've ever seen?
23 A Yes.
24 Q Are you aware whether that's the only pathology
25 report that exists regarding a mole removed in 1993?

Page 43

1 A No. I think I am aware that there was some
2 review of the original slides elsewhere for other reasons.
3 Q Other than that?
4 A No, no others.
5 MR. PEDERSEN: And that was in 1999 in Maryland.
6 Is that right?
7 THE WITNESS: Well, I'm not sure where or when.
8 I have no records of it. I'm just aware that the original
9 tissue was reviewed.
10 BY MR. KELLEY:
11 Q So as of the time that your original visit with
12 Tommy Bob Hall occurs, which is February 17 of 1999 --
13 A Um-hum.
14 Q -- there are no, to your knowledge, pathology
15 reports indicating that a 1993 mole was cancerous. Correct?
16 A Correct.
17 Q And yet during that meeting, you have specific
18 recollection of the patient and you discussing the fact that
19 he had a cancerous mole removed in 1993. Is that correct?
20 A Correct.
21 Q Doctor, do you have any information as to where
22 Tommy Bob Hall and/or his wife obtained that information
23 that he had a cancerous mole removed in 1993?
24 A No. When I saw him in February, it was of his
25 opinion that he had a malignant mole removed. I don't know

Page 44

1 where he got that information from.
2 MR. KELLEY: That's all I have.
3 EXAMINATION
4 BY MR. PEDERSEN:
5 Q And you don't know when he got that information?
6 A I don't know where or when he got that
7 information.
8 Q And you know he had met with Dr. Chicklo just
9 before seeing you?
10 A Yes.
11 Q And one final question, in 2000 after Mr. Hall
12 passed away, you had the '93 pathology report in your
13 records. If an insurance company had called you and asked
14 you whether or not Tommy Bob Hall had had any pathology, a
15 diagnosis of cancer or treatment for cancer prior to
16 November '98, what would you have told him?
17 MR. KELLEY: Objection. Calls for speculation.
18 THE WITNESS: Can I answer that?
19 BY MR. PEDERSEN:
20 Q Sure.
21 A The information I had, he had no malignancy prior
22 to January of '99.
23 MR. PEDERSEN: I have no other questions.
24 MR. KELLEY: That's it.
25 MS. MAHADY-SMITH: The only other thing is,

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'93 - Chicklo's
MICHAEL R. CASHDOLLAR, M.D.

| | | | | | | | | |
|------------------|-------|-------|------------|-----|--|-------------------|-------|-------|
| -*- | | | -3- | | | -C- | | |
| '93 [29] | 5:19 | 6:13 | 3 [1] | 2:4 | | calls [4] | 23:25 | 28:20 |
| 14:24 | 20:11 | 20:14 | | | | 34:11 | 44:17 | |
| 22:2 | 22:19 | 23:7 | | | | cancer [14] | 17:21 | 20:20 |
| 29:17 | 29:19 | 31:10 | | | | 29:2 | 30:6 | 30:8 |
| 33:10 | 33:17 | 33:18 | | | | 30:10 | 30:14 | 30:19 |
| 34:7 | 34:8 | 36:11 | | | | 30:22 | 30:23 | 34:18 |
| 37:6 | 38:9 | 38:14 | | | | 34:24 | 44:15 | 44:15 |
| 38:18 | 39:3 | 39:7 | | | | cancerous [8] | 21:11 | |
| 39:13 | 39:20 | 40:7 | | | | 22:1 | 23:6 | 23:7 |
| 42:4 | 42:20 | 44:12 | | | | 38:18 | 43:15 | 43:19 |
| '98 [6] | 28:13 | 28:18 | | | | 43:23 | | |
| 29:1 | 29:7 | 36:12 | | | | cannot [1] | 29:6 | |
| 44:16 | | | | | | caption [1] | 46:14 | |
| '99 [20] | 6:14 | 6:15 | | | | carcinoma [1] | | 11:2 |
| 7:18 | 15:10 | 16:2 | | | | care [8] | 5:12 | 5:13 |
| 18:21 | 22:13 | 30:18 | | | | 24:3 | 33:17 | 34:1 |
| 30:19 | 30:23 | 30:24 | | | | 39:2 | 40:19 | 41:1 |
| 32:6 | 33:2 | 33:2 | | | | case [4] | 17:18 | 33:23 |
| 36:12 | 36:13 | 42:4 | | | | 41:4 | 41:25 | |
| 42:5 | 42:12 | 44:22 | | | | Cashdollar [5] | 1:15 | |
| | | | | | | 1:20 | 2:3 | 3:1 |
| | | | | | | 46:7 | | |
| -1- | | | | | | CAT [1] | 10:21 | |
| 10 [1] | 5:7 | | | | | categorize [1] | | 28:24 |
| 10:08 [1] | 1:19 | | | | | Catherine [2] | 1:29 | |
| 11:09 [1] | 45:8 | | | | | 4:7 | | |
| 120 [1] | 1:21 | | | | | cc'd [1] | 9:9 | |
| 13 [1] | 7:11 | | | | | Center [1] | 24:13 | |
| 15 [4] | 9:11 | 10:18 | | | | certain [1] | 17:16 | |
| 13:3 | 40:1 | | | | | certainty [2] | | 37:5 |
| 17 [6] | 8:18 | 15:10 | | | | 37:10 | | |
| 16:2 | 18:6 | 18:21 | | | | certification [1] | 3:7 | |
| 43:12 | | | | | | certified [2] | | 26:19 |
| 17th [5] | 12:6 | 28:7 | | | | 34:16 | | |
| 31:8 | 31:20 | 38:9 | | | | certify [5] | 46:6 | 46:8 |
| 18 [1] | 7:17 | | | | | 46:13 | 46:15 | 46:19 |
| 18th [2] | 7:16 | 10:21 | | | | Chambersburg [11] | 1:22 | |
| 1973 [1] | 26:15 | | | | | 10:23 | 12:20 | 12:23 |
| 1993 [17] | 6:6 | 6:7 | | | | 13:7 | 13:9 | 16:23 |
| 7:11 | 10:11 | 19:2 | | | | 25:15 | 25:19 | 25:21 |
| 19:6 | 19:9 | 21:11 | | | | 26:24 | | |
| 21:22 | 22:7 | 25:8 | | | | changes [1] | | 25:11 |
| 33:3 | 42:11 | 42:25 | | | | Charlesworth [2] | 25:20 | |
| 43:15 | 43:19 | 43:23 | | | | 41:16 | | |
| 1999 [22] | 6:15 | 7:17 | | | | chart [6] | 6:25 | 7:1 |
| 8:18 | 8:21 | 9:1 | | | | 14:4 | 14:9 | 14:18 |
| 9:12 | 10:18 | 10:21 | | | | 37:14 | | |
| 11:22 | 11:24 | 12:6 | | | | chemotherapy [2] | 13:6 | |
| 18:6 | 20:5 | 28:7 | | | | 13:7 | | |
| 29:21 | 30:15 | 31:8 | | | | chest [1] | 10:22 | |
| 31:20 | 38:9 | 42:19 | | | | Chicklo [23] | | 6:9 |
| 43:5 | 43:12 | | | | | 6:17 | 8:19 | 8:24 |
| 1:01-CV-1265 [1] | 1:10 | | | | | 12:11 | 12:12 | 12:18 |
| 1st [1] | 29:21 | | | | | 18:7 | 18:17 | 21:15 |
| | | | | | | 21:15 | 21:18 | 21:25 |
| | | | | | | 22:5 | 22:15 | 32:5 |
| -2- | | | | | | 32:16 | 41:3 | 41:15 |
| 2-23-99 [1] | 9:6 | | | | | 42:1 | 42:4 | 42:5 |
| 20 [1] | 5:4 | | | | | 44:8 | | |
| 2000 [3] | 24:5 | 24:10 | | | | Chicklo's [6] | 7:21 | |
| 44:11 | | | | | | 19:7 | 19:20 | 21:4 |
| 2002 [2] | 1:19 | 46:23 | | | | 32:1 | 32:12 | |
| 22nd [3] | 8:21 | 9:1 | | | | | | |
| 22:13 | | | | | | | | |

Fayetteville - Legal
MICHAEL R. CASHDOLLAR, M.D.

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|------------------|-------|-----------|------|--------------|------------------|----------------|--------------------|-------|
| Fayetteville [1] | 25:16 | 24:5 | | identify [2] | 10:19 | intake [2] | 17:2 | 17:9 |
| February [15] | 1:19 | guess [2] | 13:3 | 35:13 | 22:4 | interested [1] | | 46:18 |
| 8:18 | 10:21 | | | | illness [1] | 22:9 | internist [1] | 16:24 |
| 15:10 | 16:2 | | | | immediately [3] | 18:14 | interpretation [1] | 37:25 |
| 18:21 | 28:6 | | | | 25:10 | 36:5 | interval [2] | 36:16 |
| 31:19 | 38:9 | | | | impact [1] | 23:1 | 36:19 | |
| 43:24 | 46:23 | | | | imply [1] | 20:7 | introduced [1] | 3:15 |
| felt [1] | 19:22 | | | | important [4] | 17:22 | involved [4] | 20:2 |
| few [2] | 3:15 | | | | 17:24 | 18:3 | 25:10 | 26:2 |
| file [13] | 7:9 | | | | improper [1] | 40:13 | | |
| 8:10 | 8:11 | | | | in-person [2] | 4:20 | | |
| 8:18 | 9:6 | | | | 4:22 | | | |
| 14:9 | 23:12 | | | | inaccurate [1] | 28:16 | | |
| 23:21 | 27:2 | | | | include [1] | 37:16 | | |
| filing [1] | 3:8 | | | | included [3] | 13:6 | | |
| fill [1] | 15:9 | | | | 19:5 | 32:24 | | |
| filled [6] | 15:10 | | | | includes [3] | 10:8 | | |
| 15:23 | 28:13 | | | | 14:1 | 31:22 | | |
| 29:1 | | | | | including [2] | 14:19 | | |
| final [1] | 44:11 | | | | 30:13 | | | |
| financially [1] | 46:17 | | | | incorrect [4] | 21:22 | | |
| fine [2] | 3:4 | | | | 33:7 | 33:11 | | |
| finished [1] | 29:10 | | | | indicate [1] | 18:19 | | |
| first [13] | 5:20 | | | | indicates [3] | 11:2 | | |
| 5:25 | 7:13 | | | | 14:24 | 30:1 | | |
| 12:8 | 13:12 | | | | indicating [2] | 23:14 | | |
| 28:5 | 28:5 | | | | 43:15 | | | |
| 36:25 | 38:17 | | | | indirectly [1] | 46:18 | | |
| follow-up [2] | 28:1 | | | | INDIVIDUALLY [1] | | | |
| 42:7 | | | | | 1:3 | | | |
| follows [1] | 3:2 | | | | information [64] | 4:1 | | |
| foregoing [1] | 46:6 | | | | 5:12 | 7:21 | | |
| forgot [1] | 45:1 | | | | 13:25 | 14:2 | | |
| form [10] | 3:9 | | | | 14:11 | 14:15 | | |
| 16:15 | 17:9 | | | | 15:13 | 15:16 | | |
| 33:13 | 33:19 | | | | 16:6 | 16:13 | | |
| 37:18 | 39:22 | | | | 17:9 | 17:12 | | |
| formal [1] | 27:11 | | | | 19:4 | 19:7 | | |
| foundation [3] | 28:21 | | | | 19:16 | 19:18 | | |
| 33:14 | 34:10 | | | | 19:23 | 19:24 | | |
| four [2] | 4:17 | | | | 21:1 | 21:3 | | |
| frame [1] | 28:3 | | | | 21:21 | 21:24 | | |
| frankly [1] | 4:1 | | | | 22:4 | 22:16 | | |
| front [2] | 15:13 | | | | 28:15 | 29:5 | | |
| | 23:21 | | | | 29:11 | 32:1 | | |
| | | | | | 32:23 | 32:24 | | |
| | | | | | 34:11 | 35:14 | | |
| | | | | | 37:11 | 37:23 | | |
| | | | | | 39:16 | 40:6 | | |
| | | | | | 41:2 | 41:8 | | |
| | | | | | 43:21 | 43:22 | | |
| | | | | | 44:5 | 44:7 | | |
| | | | | | initial [7] | 5:13 | | |
| | | | | | 16:15 | 18:13 | | |
| | | | | | 20:19 | 25:2 | | |
| | | | | | initiate [1] | 23:1 | | |
| | | | | | inside [2] | 14:4 | | |
| | | | | | instance [1] | 21:10 | | |
| | | | | | instruct [1] | 17:15 | | |
| | | | | | instruction [1] | 17:11 | | |
| | | | | | insufficient [1] | 33:14 | | |
| | | | | | insurance [10] | 1:13 | | |
| | | | | | 3:19 | 14:15 | | |
| | | | | | 28:18 | 28:24 | | |
| | | | | | 30:14 | 34:6 | | |
| | | | | | | | | |
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ones - report
MICHAEL R. CASHDOLLAR, M.D.

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|------------------|-------|-------|-------------------|-------|-------|-----------------|-------|-------|------------------|-------|-------|
| 5:5 | 5:8 | 8:16 | 37:15 | 37:23 | 37:24 | pretty [2] | 5:19 | 14:1 | received [5] | 22:18 | |
| 23:17 | 29:9 | 42:11 | 38:4 | 41:20 | 43:18 | previous [9] | | 7:19 | 31:25 | 31:25 | 33:3 |
| 42:20 | 42:22 | 44:11 | patient's [2] | | 17:21 | 19:9 | 20:6 | 20:7 | 34:1 | | |
| ones [1] | 41:11 | | 37:25 | | | 20:19 | 22:1 | 22:11 | receiving [1] | | 22:21 |
| operative [2] | | 8:25 | patients [4] | | 12:14 | 23:6 | 23:15 | | recognize [1] | | 15:4 |
| 9:3 | | | 12:16 | 13:24 | 16:13 | previously [1] | | 20:24 | recollection [1] | | 43:18 |
| opinion [1] | | 43:25 | Pedersen [35] | | 1:27 | primary [2] | | 20:3 | record [10] | 8:3 | 9:6 |
| opposed [1] | | 41:23 | 1:27 | 1:28 | 2:5 | 38:18 | | | 9:17 | 9:18 | 27:1 |
| origin [1] | 32:7 | | 3:4 | 4:7 | 6:12 | privileges [2] | | 26:23 | 27:16 | 36:24 | 38:21 |
| original [16] | | 5:18 | 12:1 | 20:13 | 27:16 | 26:24 | | | 39:11 | 46:20 | |
| 6:3 | 6:9 | 8:6 | 27:21 | 27:23 | 27:25 | problems [1] | | 20:20 | records [32] | | 4:1 |
| 8:9 | 8:10 | 8:16 | 28:22 | 29:8 | 31:16 | procedures [2] | | 13:20 | 4:3 | 6:17 | 9:16 |
| 20:1 | 33:23 | 36:6 | 31:18 | 33:15 | 33:20 | 17:1 | | | 9:20 | 12:2 | 13:10 |
| 36:20 | 41:8 | 42:2 | 34:14 | 36:9 | 36:22 | process [1] | 40:9 | | 16:8 | 16:11 | 16:12 |
| 43:2 | 43:8 | 43:11 | 37:20 | 38:25 | 39:17 | progressive [1] | | 25:10 | 17:2 | 18:3 | 22:4 |
| originally [1] | | 7:14 | 39:24 | 40:14 | 40:24 | prolonged [1] | | 36:17 | 24:5 | 24:13 | 27:2 |
| originate [1] | | 35:18 | 41:9 | 42:6 | 42:14 | promote [2] | | 36:6 | 27:4 | 28:17 | 28:17 |
| otherwise [1] | | 29:14 | 43:5 | 44:4 | 44:19 | 36:7 | | | 28:24 | 29:15 | 29:16 |
| outpatient [1] | | 10:13 | 44:23 | | | proposition [1] | | 28:25 | 30:12 | 35:8 | 35:10 |
| outside [1] | 34:12 | | Pennsylvania [6] | | 1:2 | provided [1] | | 29:16 | 38:1 | 38:2 | 40:1 |
| own [3] | 18:10 | 29:15 | 1:22 | 25:16 | 26:18 | provides [1] | | 35:23 | 40:19 | 41:2 | 43:8 |
| 30:12 | | | 46:2 | 46:6 | | Public [4] | 1:18 | 46:4 | 44:13 | | |
| -P- | | | perhaps [1] | | 25:3 | pull [1] | | 36:20 | reduced [1] | | 46:11 |
| page [2] | 17:9 | 17:13 | period [2] | 40:2 | 40:5 | purpose [2] | | 3:25 | reference [2] | | 24:12 |
| pain [2] | 24:1 | 24:3 | person [1] | 33:9 | | 7:22 | | | 31:8 | | |
| Pamela [3] | 1:17 | 46:4 | phone [5] | 14:12 | 21:19 | pursue [1] | 17:16 | | references [1] | | 28:2 |
| 46:24 | | | 23:25 | 41:3 | 41:12 | put [2] | 32:1 | 32:10 | referral [4] | 16:12 | 19:8 |
| paper [1] | 15:5 | | physical [3] | | 8:22 | | | | 32:1 | 32:12 | |
| part [6] | 5:12 | 13:9 | 22:6 | 22:14 | | | | | referred [10] | | 6:8 |
| 18:1 | 21:8 | 34:11 | physician [2] | | 14:1 | | | | 6:10 | 6:11 | 6:16 |
| 45:4 | | | 25:15 | | | | | | 12:10 | 12:14 | 12:16 |
| particular [1] | | 17:18 | physicians [2] | | 37:24 | | | | 17:17 | 17:19 | 17:20 |
| particularly [1] | | 17:15 | 41:15 | | | -Q- | | | referring [3] | | 14:1 |
| parties [2] | 3:7 | 46:16 | piece [2] | 15:4 | 29:9 | questioned [1] | | 36:18 | 21:24 | 37:16 | |
| passed [1] | 44:12 | | place [3] | 1:20 | 17:2 | questions [17] | | 5:14 | refute [1] | 40:16 | |
| past [10] | 4:11 | 10:8 | 46:14 | | | 5:16 | 5:17 | 6:1 | regard [2] | 6:5 | 9:3 |
| 13:24 | 14:21 | 14:23 | PLAINTIFF [2] | | 1:8 | 11:16 | 15:25 | 27:22 | regarding [5] | | 4:11 |
| 16:7 | 37:13 | 37:14 | 1:30 | | | 28:1 | 28:11 | 31:19 | 5:12 | 16:7 | 42:11 |
| 37:22 | 37:25 | | Plaintiff's [3] | | 4:11 | 35:3 | 36:23 | 37:13 | 42:25 | | |
| pathologic [1] | | 30:11 | 5:9 | 6:23 | | 38:7 | 42:6 | 44:23 | reimburse [2] | | 27:5 |
| pathological [1] | | 7:11 | Plaintiffs [1] | | 4:6 | 46:9 | | | 27:12 | | |
| pathology [49] | | 5:13 | pleasure [1] | | 18:20 | quickly [1] | | 26:7 | relate [1] | 37:9 | |
| 5:18 | 6:1 | 6:1 | plus [1] | 14:2 | | | | | related [1] | 37:10 | |
| 6:19 | 6:20 | 7:18 | PMH [1] | 14:20 | | R [6] | 1:15 | 1:25 | relates [1] | 35:15 | |
| 7:20 | 14:2 | 19:2 | point [2] | 38:13 | 39:3 | 1:28 | 2:3 | 3:1 | relationship [3] | | 23:5 |
| 19:11 | 19:14 | 19:15 | policies [1] | | 17:1 | 46:7 | | | 35:16 | 36:25 | |
| 19:17 | 19:19 | 22:17 | possible [2] | | 36:17 | radiology [1] | | 11:11 | relative [2] | | 46:15 |
| 22:19 | 29:17 | 29:19 | 45:6 | | | RAMBO [1] | | 1:14 | 46:16 | | |
| 29:20 | 30:14 | 30:17 | possibly [1] | | 4:17 | Rarely [1] | 3:24 | | relevant [1] | | 33:17 |
| 31:9 | 31:12 | 31:22 | practice [8] | | 12:20 | rather [1] | 38:4 | | rely [1] | 11:17 | |
| 32:6 | 32:10 | 32:14 | 12:23 | 16:18 | 16:19 | re-review [1] | | 39:4 | relying [1] | 19:22 | |
| 32:20 | 33:3 | 33:6 | 17:1 | 26:16 | 37:21 | re-reviewed [3] | | 39:3 | remember [4] | | 5:14 |
| 33:10 | 33:18 | 33:23 | 41:19 | | | 39:6 | 39:14 | | 13:13 | 13:14 | 21:5 |
| 34:2 | 34:8 | 35:1 | practices [1] | | 25:16 | reach [1] | 35:25 | | removal [4] | | 31:1 |
| 38:8 | 38:10 | 38:17 | practitioner [1] | | 25:21 | reached [2] | | 32:5 | 31:3 | 33:18 | 35:24 |
| 39:12 | 40:8 | 41:21 | predominantly [1] | | 26:4 | 32:19 | | | removed [7] | | 23:7 |
| 42:17 | 42:20 | 42:24 | prefer [1] | 12:1 | | realize [1] | 33:10 | | 32:7 | 36:11 | 42:25 |
| 43:14 | 44:12 | 44:14 | prepared [5] | | 9:14 | realized [1] | | 38:10 | 43:19 | 43:23 | 43:25 |
| patient [19] | | 13:21 | 10:14 | 11:9 | 11:9 | realm [1] | 40:12 | | removes [1] | | 41:20 |
| 13:22 | 14:12 | 14:19 | 11:11 | | | reason [5] | 22:23 | 36:20 | repeat [1] | 38:20 | |
| 15:15 | 15:17 | 16:8 | prescriptions [1] | | 24:1 | 38:12 | 39:18 | 40:16 | rephase [1] | 31:16 | |
| 16:11 | 17:2 | 17:16 | present [2] | 22:8 | 29:13 | reasons [1] | 43:2 | | rephrase [1] | | 20:15 |
| 17:18 | 30:4 | 35:23 | presume [1] | | 3:23 | receive [2] | 7:13 | 27:18 | report [46] | 7:11 | 7:25 |
| | | | | | | | | | 8:25 | 9:3 | 9:11 |

Multi-Page™

Um-hum - yet
MICHAEL R. CASHDOLLAR, M.D.

| -U- | | | 3:1 | 6:14 | 12:5 |
|-----------------------|-------|-------|----------------------|-------|-------|
| Um-hum [20] | 7:12 | | 29:5 | 36:5 | 36:16 |
| 8:7 | 8:20 | 9:22 | 38:24 | 39:15 | 40:13 |
| 11:4 | 11:6 | 15:19 | 41:7 | 41:14 | 43:7 |
| 18:18 | 18:22 | 19:13 | 44:18 | 45:6 | 46:9 |
| 22:3 | 22:20 | 23:23 | 46:21 | 46:22 | |
| 31:4 | 33:1 | 40:4 | word [1] | 35:13 | |
| 40:21 | 41:24 | 42:13 | worksheet [1] | | 17:6 |
| 43:13 | | | worry [1] | 39:21 | |
| under [2] | 34:1 | 46:12 | write [1] | 18:10 | |
| understand [2] | 20:16 | | writing [4] | 15:4 | 15:7 |
| 32:8 | | | 15:8 | 15:9 | |
| UNITED [1] | 1:1 | | written [1] | 17:5 | |
| University [1] | 26:13 | | wrote [1] | 18:6 | |
| unrelated [1] | 37:12 | | -Y- | | |
| up [2] | 12:4 | 36:20 | year [1] | 26:14 | |
| upper [1] | 15:16 | | year's [1] | 40:2 | |
| using [1] | 28:24 | | years [3] | 12:19 | 22:10 |
| Usual [1] | 3:3 | | 26:11 | | |
| -V- | | | yellow [1] | 14:10 | |
| V [1] | 1:10 | | yet [1] | 43:17 | |
| various [1] | 13:4 | | | | |
| Virginia [1] | 26:13 | | | | |
| visit [13] | 5:20 | 5:24 | | | |
| 5:25 | 6:4 | 13:12 | | | |
| 13:14 | 15:12 | 18:15 | | | |
| 20:10 | 20:19 | 25:2 | | | |
| 31:9 | 43:11 | | | | |
| visiting [1] | 24:2 | | | | |
| visits [6] | 13:4 | 13:6 | | | |
| 13:6 | 25:4 | 25:5 | | | |
| 40:2 | | | | | |
| vitae [1] | 27:6 | | | | |
| -W- | | | | | |
| wait [2] | 11:18 | 12:1 | | | |
| waive [1] | 45:3 | | | | |
| waived [1] | 3:8 | | | | |
| WALLACE [1] | 1:24 | | | | |
| Waynesboro [1] | 26:25 | | | | |
| ways [1] | 38:6 | | | | |
| Wednesday [1] | 18:21 | | | | |
| week [5] | 4:17 | 4:18 | | | |
| 5:5 | 5:23 | 35:4 | | | |
| weeks [1] | 35:4 | | | | |
| Weinrich [1] | 9:21 | | | | |
| West [1] | 26:13 | | | | |
| WHEREOF [1] | 46:22 | | | | |
| white [1] | 8:14 | | | | |
| whole [3] | 16:20 | 23:18 | | | |
| 39:25 | | | | | |
| Wide [1] | 10:10 | | | | |
| wife [3] | 13:17 | 25:3 | | | |
| 43:22 | | | | | |
| William [1] | 10:14 | | | | |
| within [2] | 16:25 | 46:5 | | | |
| without [1] | 32:20 | | | | |
| witness [18] | 2:1 | | | | |

FALLING SPRING MEDICAL ASSOCIATES

NEW PATIENT INFORMATION RECORD (PLEASE PRINT OR WRITE LEGIBLY)

PATIENT INFORMATION

| | | | |
|---|--|--|---|
| PATIENT'S NAME LAST FIRST MI <u>HALL</u> <u>Tommy</u> <u>B</u> | AGE <u>43</u> | DATE OF BIRTH <u>5-12-55</u> | SOCIAL SECURITY NO. <u>563-82-5959</u> |
| STREET ADDRESS <u>517 Mt PLEASANT RD</u> | CITY AND STATE <u>FAYETTEVILLE PA</u> | ZIP CODE <u>17222</u> | HOME PHONE NO. <u>717-352-9030</u> |
| PATIENT'S EMPLOYER <u>CRESSLER TRUCKING INC</u> | MARITAL STATUS: SINGLE <input type="radio"/> <u>MARRIED</u> <input checked="" type="radio"/> WIDOW <input type="radio"/> DIVORCED <input type="radio"/> | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS <u>1069 SEIBERT AVE</u> | CITY AND STATE <u>SHIPPENSBURG PA</u> | ZIP CODE | |
| IN CASE OF EMERGENCY CONTACT: NAME <u>NANCY HALL</u> | RELATIONSHIP <u>WIFE</u> | PHONE NUMBER <u>717-352-9030</u> | |
| SPOUSE'S NAME <u>NANCY M HALL</u> | DATE OF BIRTH <u>5-28-99</u> | SOCIAL SECURITY NUMBER <u>205-44-1196</u> | |
| SPOUSE'S EMPLOYER — | OCCUPATION (INDICATE IF STUDENT) | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS — | CITY AND STATE | ZIP CODE | |
| WHO REFERRED YOU TO THIS PRACTICE? <u>DR CHARLES WORTH/DR CHICKO</u> | FAMILY DOCTOR <u>DR CHARLES WORTH</u> | | |

INSURANCE INFORMATION

☐ Medicare (Medical Insurance Only)

Medicare Number _____

Effective Date _____

☒ Blue Shield

If Out of State, Identify _____

Address, If Out of State _____

Name of Insured Tommy B HallIdentification No. PA 563 82 5959Group No. 026824800☐ Other Insurance _____

Address _____

Name of Insured _____

Policy No. _____

Group No. _____

☐ Other Insurance _____

Address _____

Name of Insured _____

Policy No. _____

Group No. _____

☐ Medicaid (Medical Assistance)

Recipient Number _____

In order to control our cost of billing, we request that office visits be paid at the time service is rendered. We would rather control our billing costs than be forced to raise our fees.

AUTHORIZATION: I hereby authorize the physician indicated above to furnish information to insurance carriers concerning this illness/accident, and I hereby irrevocably assign to the doctor all payments for medical services rendered. I understand that I am financially responsible for all charges whether or not covered by insurance.

Date

2-17-99

Responsible Party Signature

Tommy B Hall, Jr.

HALL, Tommy B.

Referring Physician

in Charleston
Dr. Charles 2/11
thru ca

Date Referred

WT 210 HT 5'6" BP 130/74 P 92 AGE 43

DATE: 2/17/99

CHIEF COMPLAINT:

lt. CERVICAL NODE

Hypert.

ALLERGIES: NKA

MEDICATIONS: FENICUS - Sulfate T daily

PMH: anemia

~~WOUND/WOUND~~
MALIGNANT NODE ON BACK 93
Ruptured of HERN DISC.SURGERY: spinal surgery K2 - E4 - 93 - Ruptured of HERN DISC.
malignant mole excised from back in 1993
excisional biopsy of deep cervical node 1/22/99SH: OCCUPATION: TRUCK DRIVER / CRESSER - MARRIED / 1 CHILD
SMOKE: 2ppd
ALCOHOL: 0
CAFFEINE: COFFEE - 5 cups per dayFH: 4 MOTHER 62 Healthy
4 FATHER 65 DM, SKIN CANCER
1 BROTHERS 42 Healthy

1 SISTERS Half 17 Healthy

D0177

92/23/2000

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW
AS THE REPRESENTATIVE AND :
ADMINISTRATRIX OF THE ESTATE :
OF TOMMY HALL, DECEASED, HER :
HUSBAND, :
PLAINTIFF :
V : 1:01-CV-1265
CUNA MUTUAL GROUP, CUNA :
MUTUAL INSURANCE SOCIETY, :
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: JOHN G. ENDERS, M.D.

TAKEN BY: DEFENDANTS

BEFORE: PAMELA S. SULLIVAN,
REPORTER-NOTARY PUBLIC

DATE: JANUARY 17, 2002, 10:05 A.M.

PLACE: CHAMBERSBURG GASTROENTEROLOGY
ASSOCIATES
120 NORTH 7TH STREET
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

McNEES WALLACE & NURICK, LLC
BY: MICHAEL R. KELLEY, ESQUIRE

FOR - DEFENDANTS

PEDERSEN & PEDERSEN
BY: STEPHEN R. PEDERSEN, ESQUIRE
CATHERINE M. MAHADY-SMITH, ESQUIRE

FOR - PLAINTIFF

HAE
Reporting Service, Inc.
Hughes
Albright
Foltz
Natale

| Page 2 | Page 4 |
|---|---|
| <p>1 WITNESS</p> <p>2 NAME EXAMINATION</p> <p>3 JOHN G. ENDERS, M.D.</p> <p>4 BY: MR. KELLEY 3, 27</p> <p>5 BY: MR. PEDERSEN 20,33</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 A Chambersburg Gastroenterology Associates.</p> <p>2 Q How long have you been associated with that</p> <p>3 practice?</p> <p>4 A I was here in 1980, and I've been in the same</p> <p>5 location since that time.</p> <p>6 Q Were you at one time referred to as the Fairway</p> <p>7 Medical Associates?</p> <p>8 A No, Falling Spring Medical Associates.</p> <p>9 Q Falling Springs?</p> <p>10 A Yes.</p> <p>11 Q Are you no longer referred to as that?</p> <p>12 A That's a complicated situation. But it's not a</p> <p>13 corporation, just the name of the group we share this office</p> <p>14 with.</p> <p>15 Q But when we have medical records that refer to</p> <p>16 Falling Springs, that's also part of your practice?</p> <p>17 A Right, that's this office location.</p> <p>18 Q Do you have a particular medical specialty?</p> <p>19 A Gastroenterology.</p> <p>20 Q Are you board certified in that?</p> <p>21 A Yes.</p> <p>22 Q Do you have any other specialties?</p> <p>23 A Internal medicine before that.</p> <p>24 Q I'm sorry?</p> <p>25 A Internal medicine.</p> |
| Page 3 | Page 5 |
| <p>1 JOHN G. ENDERS, M.D., called as a witness, being</p> <p>2 duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. KELLEY:</p> <p>5 Q Good morning, Doctor. My name is Mike Kelley, as</p> <p>6 I just introduced myself to you a few moments ago. I'm a</p> <p>7 lawyer with McNees Wallace & Nurick in Harrisburg.</p> <p>8 We're here today to take your deposition in a</p> <p>9 case brought by the estate of Tommy Hall and his wife</p> <p>10 against CUNA Mutual Insurance Group, which is my client. I</p> <p>11 represent CUNA. We're here to ask you some questions today</p> <p>12 about your treatment of Mr. Hall and frankly focusing on</p> <p>13 some of the medical records -- I think there's only three --</p> <p>14 that have some relevance to the action that we're involved</p> <p>15 with.</p> <p>16 Before I get into the specifics of the questions</p> <p>17 about the medical records, I'd like to just get a little bit</p> <p>18 of background on you if I could.</p> <p>19 A Fine.</p> <p>20 Q Could you just give us your full name, please?</p> <p>21 A John G. Enders, E-N-D-E-R-S.</p> <p>22 Q And do you have a practice separate from the</p> <p>23 hospital?</p> <p>24 A Yes.</p> <p>25 Q What's the name of your practice?</p> | <p>1 Q Can you describe your education, Doctor, after</p> <p>2 high school, formal education?</p> <p>3 A College: Elizabethtown College, four years.</p> <p>4 Then Hahnemann Medical College in Philadelphia, four years.</p> <p>5 Then Geisinger Medical Center for internship and residency,</p> <p>6 internal medicine, three years. Then two years in the Army.</p> <p>7 Then two years GI fellowship in the Army.</p> <p>8 Q So you began practicing on your own in about</p> <p>9 1980?</p> <p>10 A 1980.</p> <p>11 Q In which states are you licensed to practice</p> <p>12 medicine?</p> <p>13 A Pennsylvania.</p> <p>14 Q Do you currently have privileges at any</p> <p>15 hospitals?</p> <p>16 A Chambersburg.</p> <p>17 Q Anywhere else?</p> <p>18 A No.</p> <p>19 Q Has your license to practice ever been suspended</p> <p>20 or revoked?</p> <p>21 A No.</p> <p>22 Q Doctor, do you maintain a current curriculum</p> <p>23 vitae?</p> <p>24 A Yes.</p> <p>25 Q At some point if we could get a copy of that,</p> |

Page 10

1 A Yes.

2 Q How many times did you meet with him?

3 A Two, I believe. Oh, no, three.

4 Q Three meetings with him?

5 A Yes.

6 Q What was the purpose of your involvement with Mr.

7 Hall?

8 A He was referred to me for a microcytic anemia and

9 with a request that I do colonoscopy and ultimately an upper

10 endoscopy.

11 Q Was anyone else present other than you and Mr.

12 Hall when you met with him?

13 A No.

14 Q His wife wasn't with him?

15 A I don't remember that.

16 Q It's possible she was?

17 A It's possible she was, yes.

18 Q Would you routinely have a member of your medical

19 staff with you during the visit with the patient?

20 A No.

21 Q Did your office or you personally create any

22 records of the meetings or visits that you had with Mr.

23 Hall?

24 A Yes.

25 Q Doctor, in my records that I've received, I have

Page 11

1 three documents. And I just want to make sure that it's the

2 same documents that you have and make sure that you don't

3 have more than I have or less than I have for that matter.

4 I have a record that at the top says, Falling

5 Spring Medical Associates. At the bottom, it's signed by

6 Tommy Hall and dated February 17, 1999.

7 A Correct.

8 Q Do you have that? And then another page that

9 appears to have information at the top about his height and

10 weight and then continues on with allergies, medications,

11 patient medical history, et cetera. Do you see that?

12 A That's the back side of the first one, yes.

13 Q Okay.

14 MS. MAHADY-SMITH: And that's the date of

15 2-23-99. Right?

16 THE WITNESS: That entire form was 2-23.

17 MS. MAHADY-SMITH: '99?

18 MR. PEDERSEN: I think you meant 2-17.

19 MR. KELLEY: 2-17-99 is the one that I have.

20 MR. PEDERSEN: 2-23 is --

21 THE WITNESS: 2-23-99.

22 BY MR. KELLEY:

23 Q I have one also dated 2-17-99. Do you have that?

24 A No, I saw him first on 23. I have nothing from

25 2-17.

Page 12

1 Q That's interesting. Let me show you what I have

2 here. Just ignore my highlighting here, Doctor. That's

3 what I have.

4 A This is Dr. Cashdollar's chart.

5 Q Okay.

6 A That's not mine.

7 Q Is this one yours?

8 A That one's mine, yes.

9 Q So Dr. Cashdollar was in Falling Spring Medical

10 Associates as well?

11 A He is in Falling Spring Medical Associates, but

12 he's not an associate with our group. He's in

13 hematology/oncology.

14 Q All right. When is the first time that you saw

15 Mr. Hall?

16 A The 23rd of February of '99.

17 Q So we have then the document of February 23, '99,

18 that has two pages to it. Right?

19 A Front and back, right.

20 Q Front and back. And then I also have a document

21 dated March 15 of 1999 that's a colonoscopy report.

22 A Yes.

23 Q Do you have that?

24 A And there's also a clinic note that goes with the

25 2-23-99. You should have that as well.

Page 13

1 Q I don't believe I have that. Can I see what

2 you've got there?

3 A It's the top part and the second page from 2-23.

4 Others are ongoing and in sequence.

5 Q No, I don't have this one. Is there any other

6 notes then that you have, Doctor?

7 A So far, no. This is the only thing.

8 Q Can you take a look through your file then and

9 see if you have any other medical records regarding --

10 A I have the colonoscopy of 3-15.

11 Q Right.

12 A The upper endoscopy of 5-26-99. I have a copy of

13 Dr. Cashdollar's notes from February 17, a letter he sent to

14 me. And that is all.

15 Q Okay. Let's go back then, Doctor, to the --

16 A I'm sorry. I do have one other thing. I have a

17 copy of an upper GI and small bowel follow-through from

18 5-18-99 with notes that I made on the bottom of that.

19 Q Thank you.

20 MS. MAHADY-SMITH: Doctor, may I take a look at

21 that too, please? Thank you. Oh, we have it. Sorry,

22 Doctor.

23 BY MR. KELLEY:

24 Q If you would, Doctor, would you go back to the

25 initial document, the February 23, '99, document?

Page 18

1 A Yes.
2 Q And in the Indication for Procedure, it says,
3 This is a 43-year-old white male who had melena,
4 M-E-L-E-N-A, removed in 1993. Do you see that?
5 A Yes.
6 Q Does that mean melanoma? Is that what that
7 refers to?
8 A My copy is corrected, but your copy is probably
9 not.
10 Q Where did you get that information when you put
11 it in this particular report?
12 A When I dictate these, I have my chart available
13 to me. So from my record, it goes into the dictation.
14 Q And there was one document, Doctor, that you
15 showed me that I didn't have. Yes, I believe that's the
16 one.
17 A My clinic note from 2-23.
18 Q May I see that again? I'm sorry. And this is
19 2-23-99. These are notes of the visit. Is that right?
20 A Correct.
21 Q And these are your notes. Correct?
22 A Correct.
23 Q And they refer to a 43-year-old white male with
24 melanoma in 1993?
25 A Correct.

Page 19

1 Q Again, that's you dictating that and it being
2 transcribed by someone else. Correct?
3 A Correct.
4 Q And then you reviewing that afterwards?
5 A Yes.
6 Q And that information about the melanoma in '93,
7 again, would come from the records that you had prior to
8 dictating this. Is that right?
9 A Correct.
10 Q Doctor, at any time during the time that you were
11 treating Mr. Hall, did you ever -- were you ever provided
12 with information that suggested that Mr. Hall did not have a
13 cancerous mole removed in 1993?
14 A No.
15 Q Have you -- since the time that he treated with
16 you, have you since been given information that he did not
17 have a malignant mole in 1993?
18 A No.
19 Q Other than the patient himself or perhaps his
20 wife and Dr. Cashdollar, did you ever have any
21 communications, that is, either orally or through letter
22 form with any other doctors regarding Mr. Hall?
23 A Not that I remember.
24 Q And there's nothing in your records that would
25 indicate that?

Page 20

1 A No.
2 MR. KELLEY: That's all I have for you, Doctor.
3 Thank you.
4 EXAMINATION
5 BY MR. PEDERSEN:
6 Q Now, I get to ask follow-up questions to try to
7 clarify some things.
8 A Okay.
9 Q First of all, I wanted to clarify the first time
10 that you saw Tommy Bob Hall was February 23rd, '99. Is that
11 right?
12 A Correct.
13 Q And is it fair to say then that you have no
14 information about what Tommy Bob Hall knew about his
15 condition in November of '98 at the time he was filling out
16 an insurance application?
17 A That's correct.
18 Q And it would be a -- how would you characterize
19 someone's efforts to use your records to state that Tommy
20 Bob Hall knew he had cancer in '98 and lied on an insurance
21 application?
22 MR. KELLEY: Objection.
23 BY MR. PEDERSEN:
24 Q Would that be a fair use of your records?
25 A No.

Page 21

1 Q How would you characterize an effort to use your
2 records in that manner?
3 MR. KELLEY: Same objection.
4 THE WITNESS: Inappropriate.
5 BY MR. PEDERSEN:
6 Q In fact, during the questioning from the attorney
7 for the insurance company, did they at any time during that
8 questioning about trying to get truthful and accurate
9 records show you the '93 pathology report?
10 A No.
11 Q Would you like to see that report?
12 A Sure.
13 Q Let me show you the '93 pathology report. What
14 does that report tell us with respect to the '93 mole that
15 was removed?
16 A That it was a dysplastic nevus, not a melanoma.
17 Q So if you had your records and this pathology
18 report, what conclusions could you reach?
19 MR. KELLEY: Objection. Calls for speculation.
20 BY MR. PEDERSEN:
21 Q I'm just putting you in the same position the
22 insurance company was in when it was making decisions.
23 MR. KELLEY: Objection. That's not true. Calls
24 for speculation. Lack of foundation. Go ahead.
25 THE WITNESS: Had I had that information, I

Page 26

1 Q Dr. Hurley, if he had been -- well, you're not
2 aware that he was deposed already. Is that correct?
3 A No, I have no idea.
4 Q If he had been deposed and said that he got this
5 pathology report and reported to the patient a benign
6 condition, you wouldn't have any information to refute that?
7 A That's correct.
8 Q And, in fact, isn't that how you would report to
9 a patient this same pathology report?
10 A Yes.
11 Q And that's the only source that a patient
12 typically gets diagnosis and information about his cancer is
13 through his treating doctor and the pathology report?
14 A Yes.
15 Q Now, you were asked some questions about efforts
16 for accurate recordkeeping. Even though the best efforts
17 are made for accurate recordkeeping, mistakes can appear in
18 the record. Is that correct?
19 A Correct.
20 Q Sometimes discrepancies can appear in the record?
21 A Correct.
22 Q And a careful doctor or a careful insurance
23 company would attempt to remedy those discrepancies by
24 looking at things like pathology reports?
25 A Correct.

Page 27

1 Q Particularly if a critical decision, a life-care
2 decision is being made or displacing someone from their home
3 is being made, you would expect a careful review?
4 A Correct.
5 Q You were asked whether you had recollections of
6 meeting with Tommy Bob Hall. Do you have any recollection
7 during any of those meetings -- and remember this is in
8 February of '99 -- what Tommy Bob Hall reported to you about
9 that mole?
10 A I do not.
11 Q Do you recall whether he reported to you as
12 having had a treatment and removal of a cancerous mole?
13 A No.
14 Q You don't know when the link was made between the
15 mole that was removed and the node on Tommy Bob Hall's neck,
16 do you?
17 A That's correct.
18 Q And you don't know at the time you got Dr.
19 Cashdollar's letter whether he had gone back and re-reviewed
20 slides or spoken with pathologists at the time he wrote that
21 letter, do you?
22 A That's correct. I do not know.
23 MR. PEDERSEN: I don't have any other questions.
24 Thank you, Dr. Enders.
25 EXAMINATION

Page 28

1 BY MR. KELLEY:
2 Q I just I have couple of follow-up, Doctor.
3 When you met with Plaintiff's counsel back in the
4 latter part of 2001, did they at that time show you a copy
5 of the pathology report from 1993?
6 A Not that I recall.
7 Q So the first opportunity then that the Plaintiffs
8 had to discuss with you, they didn't supply you with this
9 information?
10 A I don't recall. I certainly did not put anything
11 in my record.
12 Q Is it fair to say that today is the first time
13 that you've been advised that there exists this pathology
14 report from 1993 that indicates a dysplastic nevus?
15 A That's the first time I've seen the report to the
16 best of my recollection. I know there's been controversy
17 about the report.
18 Q Now, Doctor, when your office obtains information
19 about a patient's medical history, does your nurse who's
20 actually taking that history, does she endeavor to make sure
21 that that information is accurate?
22 A Other than reviewing the report that is
23 firsthand, we don't go back and check the origination of
24 that report. She would not --
25 Q Her information either comes from the patient or

Page 29

1 from, in this case, the referring letter. Is that correct?
2 A Correct.
3 Q And is it your practice to rely upon information
4 that's supplied by the patient?
5 A If the information is pertinent to what I am
6 doing, I will go back and review other information. If it
7 doesn't have a bearing on my exact part, I may or may not.
8 Q Do you rely upon information that's supplied to
9 you by other doctors?
10 A As a rule, yes.
11 Q Do you know Dr. Cashdollar?
12 A Yes.
13 Q Have you worked with him on other cases?
14 A Yes.
15 Q Have you relied upon his information that has
16 been supplied by him in other cases, other patients that
17 you've dealt with?
18 A Yes.
19 Q Is it a reasonable thing to do, to rely upon that
20 information that's contained in a referring letter from Dr.
21 Cashdollar?
22 A Yes.
23 Q And, Doctor, you would agree with me that if a
24 patient -- if that's what happened here, we need to find
25 that out. But if a patient indicates in his medical history

Page 34

1 to that procedure?

2 A The colonoscopy as an evaluation for his anemia,
3 not even as a follow-up to that procedure.

4 Q And that anemia was -- and the follow-up was
5 referred to you. And those were events that were occurring
6 in '99?

7 A Correct.

8 Q You were asked questions whether or not you could
9 rely on the referring letter and doctors referring patients
10 to you and information they provided to you. If you had had
11 that -- you had the referring letter. You had some
12 information. But if you had had the '93 pathology report,
13 that would have caused some questions for you, wouldn't it?

14 MR. KELLEY: Objection. Calls for speculation.

15 THE WITNESS: It would have -- actually, not
16 really because what I knew was he had a melanoma lymph node.
17 I had no idea where that came from, and this would not have
18 made a difference in my care of Tommy Hall one way or the
19 other.

20 BY MR. PEDERSEN:

21 Q But this pathology report in your mind certainly
22 would not then point to this mole as being the primary
23 source of that lymph node. Is that right?

24 A That's correct.

25 Q You would agree with me that patients themselves,

Page 35

1 although they may suspect and be concerned about things,
2 they do not diagnose cancer, do they?

3 A Correct.

4 Q The pathology report diagnoses cancer?

5 A Correct.

6 Q You were asked questions about whether you --
7 what you were aware of that CUNA Mutual had or didn't have
8 at the time they were making decisions about the Tommy Bob
9 Hall home. Would you consider it unreasonable to conclude
10 that Tommy Bob Hall knew he had cancer in '98 as a result of
11 the pathology report from '93?

12 MR. KELLEY: Objection. Calls for speculation
13 beyond the scope of this witness's background and training
14 and based upon insufficient information.

15 MR. PEDERSEN: And the door was opened by the
16 very questions that you asked.

17 THE WITNESS: I would think it would be
18 unreasonable.

19 MR. PEDERSEN:

20 Q Unreasonable. And if, furthermore, the insurance
21 company had the deposition transcript of Dr. Hurley, the
22 doctor who removed the mole, who said he reviewed the
23 pathology report, considered it a benign condition and
24 reported that to the patient, would you consider it
25 unreasonable to conclude that Tommy Bob Hall knew he had

Page 36

1 cancer and knew he had been diagnosed with cancer?

2 MR. KELLEY: Same objection as before.

3 BY MR. PEDERSEN:

4 Q In '93.

5 A I would think he had no idea.

6 Q And if Tommy Bob Hall, before he passed away, was
7 further deposed and that deposition were provided to the
8 insurance company and he said the first time he had any
9 suspicions or concerns that he had cancer was in '99, not
10 '98, and in light of the pathology report and Dr. Hurley's
11 deposition, what would you conclude with respect to an
12 insurance company concluding he had -- knew he had cancer in
13 '98?

14 MR. KELLEY: Same objection as the previous two
15 questions.

16 THE WITNESS: I would think that it would be hard
17 to confirm that he knew anything in '98.

18 MR. PEDERSEN: I have no other questions.

19 MR. KELLEY: That's it. Thank you, Doctor.

20 THE WITNESS: Thank you.

21 MS. MAHADY-SMITH: Thanks, Dr. Enders.
22 (Whereupon, the deposition was concluded at 10:48
23 a.m.)

24

25

Page 37

1 COUNTY OF DAUPHIN :
SS

2 COMMONWEALTH OF PENNSYLVANIA :

3

4 I, Pamela S. Sullivan, a Notary Public, authorized to
5 administer oaths within and for the Commonwealth of
6 Pennsylvania, do hereby certify that the foregoing is the
7 testimony of John G. Enders, M.D.

8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.

13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.

15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.

19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.

22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 17th day of January, 2002.

24 Pamela S. Sullivan
25 Reporter-Notary Public

1 COUNTY OF DAUPHIN :
2 COMMONWEALTH OF PENNSYLVANIA : SS

3
4 I, Pamela S. Sullivan, a Notary Public, authorized to
5 administer oaths within and for the Commonwealth of
6 Pennsylvania, do hereby certify that the foregoing is the
7 testimony of John G. Enders, M.D.

8 I further certify that before the taking of said
9 deposition, the witness was duly sworn; that the questions
10 and answers were taken down stenographically by the said
11 Reporter-Notary Public, and afterwards reduced to
12 typewriting under the direction of the said Reporter.

13 I further certify that the said deposition was taken
14 at the time and place specified in the caption sheet hereof.

15 I further certify that I am not a relative or employee
16 or attorney or counsel to any of the parties, or a relative
17 or employee of such attorney of counsel, or financially
18 interested directly or indirectly in this action.

19 I further certify that the said deposition
20 constitutes a true record of the testimony given by the said
21 witness.

22 IN WITNESS WHEREOF, I have hereunto set my hand this
23 17th day of January, 2002.

24 **NOTARIAL SEAL**
PAMELA S. SULLIVAN, Notary Public
Swatara Twp., Dauphin County
25 My Commission Expires Jan. 31, 2005

Pamela S. Sullivan
Pamela S. Sullivan
Reporter-Notary Public

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'93 - consider
JOHN G. ENDERS, M.D.

| | | | | | | | | | | | |
|------------------|-------|-------|---------------------------|-------|-------|-----------------------------|-------|-------|---------------------------|-------|-------|
| -1- | | | -5- | | | Attempting [1] 25:20 | | | Center [1] 5:5 | | |
| '93 [17] | 15:10 | 19:6 | 5-18-99 [1] | 13:18 | | attorney [4] | 21:6 | | certainly [6] | 22:1 | |
| 21:9 | 21:13 | 21:14 | 5-26-99 [1] | 13:12 | | 24:1 | 37:16 | 37:17 | 23:18 | 23:20 | 23:21 |
| 22:7 | 23:3 | 23:13 | | | | authorized [2] | 8:7 | | 28:10 | 34:21 | |
| 23:16 | 23:21 | 24:2 | | | | 37:4 | | | certified [1] | 4:20 | |
| 24:13 | 25:11 | 33:16 | | | | available [1] | 18:12 | | certify [5] | 37:6 | 37:8 |
| 34:12 | 35:11 | 36:4 | | | | aware [11] | 9:7 | 25:1 | 37:13 | 37:15 | 37:19 |
| '98 [7] | 20:15 | 20:20 | -7- | | | 26:2 | 30:2 | 30:8 | cetera [1] | 11:11 | |
| 30:21 | 35:10 | 36:10 | 7TH [1] | 1:22 | | 30:13 | 30:14 | 30:19 | Chambersburg [6] | 1:20 | |
| 36:13 | 36:17 | | | | | 30:20 | 31:18 | 35:7 | 1:23 | 4:1 | 5:16 |
| '99 [13] | 11:17 | 12:16 | -A- | | | away [1] | 36:6 | | 32:6 | 32:21 | |
| 12:17 | 13:25 | 16:11 | a.m [2] | 1:19 | 36:23 | | | | change [1] | 23:18 | |
| 17:18 | 20:10 | 27:8 | able [2] | 9:12 | 23:7 | -B- | | | changes [1] | 23:20 | |
| 30:19 | 30:20 | 33:21 | absolutely [3] | 23:14 | | background [3] | 3:18 | | characterize [2] | 20:18 | |
| 34:6 | 36:9 | | 24:19 | 24:22 | | 33:2 | 35:13 | | 21:1 | | |
| -1- | | | academic [1] | 23:9 | | based [1] | 35:14 | | Charlesworth [2] | 32:17 | |
| 10:05 [1] | 1:19 | | accurate [10] | 21:8 | | basis [2] | 22:11 | 22:12 | 32:19 | | |
| 10:48 [1] | 36:22 | | 22:17 | 22:19 | 22:23 | bearing [2] | 22:8 | 29:7 | chart [6] | 7:7 | 8:6 |
| 120 [1] | 1:22 | | 22:25 | 23:22 | 25:13 | began [1] | 5:8 | | 8:6 | 12:4 | 16:24 |
| 15 [1] | 12:21 | | 26:16 | 26:17 | 28:21 | benign [3] | 26:5 | 31:13 | 18:12 | | |
| 17 [4] | 1:19 | 11:6 | action [5] | 1:3 | 3:14 | 35:23 | | | check [1] | 28:23 | |
| 13:13 | 16:11 | | 23:5 | 23:8 | 37:18 | best [2] | 26:16 | 28:16 | Chicklo [3] | 16:13 | |
| 17th [1] | 37:23 | | add [1] | 15:21 | | between [1] | 27:14 | | 32:2 | 32:4 | |
| 1980 [3] | 4:4 | 5:9 | addition [1] | 8:20 | | beyond [1] | 35:13 | | CIVIL [1] | 1:3 | |
| 5:10 | | | ADMINISTRATRIX [1] | 1:5 | | bit [1] | 3:17 | | clarify [2] | 20:7 | 20:9 |
| 1993 [12] | 15:24 | 16:21 | advised [1] | 28:13 | | board [1] | 4:20 | | client [2] | 3:10 | 31:19 |
| 16:25 | 18:4 | 18:24 | afterwards [2] | 19:4 | | Bob [14] | 20:10 | 20:14 | clinic [2] | 12:24 | 18:17 |
| 19:13 | 19:17 | 28:5 | 37:11 | | | 20:20 | 23:12 | 25:23 | colleague [1] | 32:20 | |
| 28:14 | 30:1 | 30:8 | again [4] | 17:18 | 18:18 | 25:24 | 27:6 | 27:8 | College [3] | 5:3 | |
| 31:4 | | | 19:1 | 19:7 | | 27:15 | 33:19 | 35:8 | 5:3 | 5:4 | |
| 1998 [2] | 30:9 | 31:9 | against [1] | 3:10 | | 35:10 | 35:25 | 36:6 | colonoscopy [6] | 10:9 | |
| 1999 [3] | 11:6 | 12:21 | ago [4] | 3:6 | 6:7 | bottom [3] | 11:5 | 13:18 | 12:21 | 13:10 | 17:15 |
| 30:2 | | | 6:12 | 6:16 | | 14:16 | | | 33:25 | 34:2 | |
| 1:01-CV-1265 [1] | 1:10 | | agree [3] | 24:15 | 29:23 | bowel [1] | 13:17 | | coming [2] | 7:21 | 25:20 |
| -2- | | | 34:25 | | | brought [1] | 3:9 | | comments [1] | 15:22 | |
| 2-17 [2] | 11:18 | 11:25 | ahead [1] | 21:24 | | -C- | | | Commonwealth [2] | 37:2 | |
| 2-17-99 [2] | | 11:19 | allergies [1] | 11:10 | | Calls [4] | 21:19 | 21:23 | 37:5 | | |
| 11:23 | | | anemia [3] | 10:8 | 34:2 | 34:14 | 35:12 | | communications [1] | 19:21 | |
| 2-23 [4] | 11:16 | 11:20 | 34:4 | | | cancer [17] | 20:20 | 23:2 | company [13] | 21:7 | |
| 13:3 | 18:17 | | annotations [1] | 15:21 | | 23:13 | 23:16 | 24:13 | 21:22 | 22:6 | 23:1 |
| 2-23-99 [4] | | 11:15 | answer [2] | 30:5 | 30:12 | 24:17 | 24:23 | 25:3 | 23:15 | 24:1 | 24:7 |
| 11:21 | 12:25 | 18:19 | answers [1] | 37:10 | | 25:11 | 26:12 | 35:2 | 24:12 | 26:23 | 31:24 |
| 20 [1] | 2:5 | | appear [2] | 26:17 | 26:20 | 35:4 | 35:10 | 36:1 | 35:21 | 36:8 | 36:12 |
| 2001 [2] | 6:18 | 28:4 | APPEARANCES [1] | 1:24 | | 36:1 | 36:9 | 36:12 | compilation [1] | 16:6 | |
| 2002 [2] | 1:19 | 37:23 | 1:24 | | | cancerous [3] | 19:13 | | complicated [1] | 4:12 | |
| 23 [3] | 11:24 | 12:17 | application [2] | 20:16 | | 27:12 | 30:8 | | concerned [1] | 35:1 | |
| 13:25 | | | 20:21 | | | caption [1] | 37:14 | | concerning [2] | 22:6 | |
| 23rd [2] | 12:16 | 20:10 | appreciate [1] | 6:1 | | care [1] | 34:18 | | 23:2 | | |
| 27 [1] | 2:4 | | Army [2] | 5:6 | 5:7 | careful [3] | 26:22 | 26:22 | concerns [1] | 36:9 | |
| -3- | | | arrives [2] | 14:12 | 15:16 | 27:3 | | | conclude [3] | 35:9 | |
| 3 [1] | 2:4 | | asks [1] | 15:18 | | case [7] | 3:9 | 6:4 | 35:25 | 36:11 | |
| 3-15 [2] | 13:10 | 17:18 | associate [3] | 7:13 | | 7:6 | 16:8 | 25:22 | concluded [1] | 36:22 | |
| 33 [1] | 2:5 | | 7:15 | 12:12 | | 29:1 | 33:15 | | concluding [1] | 36:12 | |
| -4- | | | associated [1] | 4:2 | | cases [2] | 29:13 | 29:16 | conclusion [1] | 23:22 | |
| 43-year-old [2] | 18:3 | | Associates [7] | 1:21 | | Cashdollar [6] | 12:9 | | conclusions [1] | 21:18 | |
| 18:23 | | | 4:1 | 4:7 | 4:8 | 16:13 | 19:20 | 23:19 | condition [3] | 20:15 | |
| | | | 11:5 | 12:10 | 12:11 | 29:11 | 29:21 | | 26:6 | 35:23 | |
| | | | association [1] | 8:14 | | Cashdollar's [3] | 12:4 | | confirm [1] | 36:17 | |
| | | | assume [1] | 9:22 | | 13:13 | 27:19 | | conflict [1] | 33:12 | |
| | | | attempt [1] | 26:23 | | CATHERINE [1] | 1:30 | | consider [2] | 35:9 | |
| | | | | | | caused [1] | 34:13 | | 35:24 | | |

Multi-Page™

GI - mind
JOHN G. ENDERS, M.D.

| | | | |
|-------------------------------|------------------------|------------------------|-----------------------|
| GI [2] 5:7 13:17 | indicates [2] 28:14 | 21:3 21:19 21:23 | maintenance [6] 8:5 |
| given [4] 9:4 14:13 | 29:25 | 22:9 22:20 23:4 | 8:21 8:24 9:5 |
| 19:16 37:20 | Indication [1] 18:2 | 24:4 24:7 28:1 | 9:10 9:18 |
| goes [2] 12:24 18:13 | indirectly [1] 37:18 | 30:4 30:11 30:24 | male [2] 18:3 18:23 |
| gone [1] 27:19 | INDIVIDUALLY [1] 1:3 | 31:6 31:17 33:5 | malignant [13] 15:12 |
| Good [1] 3:5 | information [34] 11:9 | 34:14 35:12 36:2 | 15:24 16:20 16:25 |
| group [4] 1:12 3:10 | 14:8 14:8 15:14 | knew [8] 20:14 20:20 | 19:17 24:17 25:6 |
| 4:13 12:12 | 15:18 16:2 16:24 | 34:16 35:10 35:25 | 25:7 30:7 31:4 |
| guess [1] 6:5 | 17:5 17:13 18:10 | 36:14 36:19 | 31:8 33:16 33:20 |
| | 19:6 19:12 19:16 | known [1] 31:8 | manager [3] 8:25 |
| | 20:14 21:25 23:6 | | 9:5 9:11 |
| -H- | 26:6 26:12 28:9 | -L- | manner [1] 21:2 |
| H [1] 1:14 | 28:18 28:21 28:25 | Lack [1] 21:24 | manual [8] 8:2 8:3 |
| Hahnemann [1] 5:4 | 29:3 29:5 29:6 | last [1] 6:22 | 8:20 9:4 9:8 |
| Hall [28] 1:3 1:6 | 29:8 29:15 29:20 | latter [2] 6:18 28:4 | 9:11 9:13 9:22 |
| 3:9 3:12 9:24 | 31:15 31:18 33:2 | LAW [1] 1:3 | March [1] 12:21 |
| 10:7 10:12 10:23 | 34:10 34:12 35:14 | lawyer [1] 3:7 | materials [1] 9:3 |
| 11:6 12:15 14:4 | initial [2] 13:25 14:4 | lawyers [1] 6:3 | matter [2] 11:3 33:15 |
| 15:23 19:11 19:12 | initiate [1] 9:21 | learned [1] 31:12 | may [11] 7:13 13:20 |
| 19:22 20:10 20:14 | inquiry [1] 33:11 | less [1] 11:3 | 16:12 17:8 18:18 |
| 20:20 23:12 27:6 | instruction [1] 8:22 | letter [14] 13:13 16:8 | 23:8 29:7 29:7 |
| 27:8 31:21 33:19 | insufficient [1] 35:14 | 16:10 16:13 16:18 | 31:12 33:13 35:1 |
| 34:18 35:9 35:10 | insurance [19] 1:13 | 16:20 17:1 19:21 | McNees [2] 1:25 |
| 35:25 36:6 | 3:10 20:16 20:20 | 27:19 27:21 29:1 | 3:7 |
| Hall's [3] 25:23 25:24 | 21:7 21:22 22:5 | 29:20 34:9 34:11 | mean [1] 18:6 |
| 27:15 | 23:1 23:15 24:1 | letters [1] 16:5 | means [1] 15:12 |
| hand [1] 37:22 | 24:4 24:7 24:11 | license [1] 5:19 | meant [1] 11:18 |
| hard [2] 7:22 36:16 | 26:22 31:20 31:24 | licensed [1] 5:11 | medical [32] 3:13 |
| Harrisburg [1] 3:7 | 35:20 36:8 36:12 | lied [1] 20:20 | 3:17 4:7 4:8 |
| height [1] 11:9 | intake [1] 14:4 | life-care [1] 27:1 | 4:15 4:18 5:4 |
| help [1] 7:17 | interested [2] 15:7 | light [2] 23:23 36:10 | 5:5 6:24 8:1 |
| helps [1] 31:16 | 37:18 | likely [3] 17:12 30:1 | 8:7 8:8 8:16 |
| hematology/oncology [1] 12:13 | interesting [1] 12:1 | limited [1] 7:6 | 8:21 8:24 9:6 |
| hereby [1] 37:6 | internal [4] 4:23 8:17 | link [1] 27:14 | 9:10 9:18 10:18 |
| hereof [1] 37:14 | 4:25 5:6 8:17 | litigation [2] 22:13 | 11:5 11:11 12:9 |
| hereunto [1] 37:22 | internship [1] 5:5 | LLC [1] 1:25 | 12:11 13:9 15:19 |
| high [1] 5:2 | interviewed [1] 15:17 | location [2] 4:5 | 22:18 28:19 29:25 |
| highlighting [1] 12:2 | interviewing [1] 14:21 | 4:17 | 31:24 32:14 32:15 |
| himself [1] 19:19 | introduced [1] 3:6 | longer [1] 4:11 | 33:2 |
| history [7] 11:11 15:19 | investigate [2] 17:5 | look [4] 7:2 8:7 | medications [1] 11:10 |
| 28:19 28:20 29:25 | 33:13 | 13:8 13:20 | medicine [5] 4:23 |
| 32:14 32:15 | involved [2] 3:14 | looking [3] 14:7 | 4:25 5:6 5:12 |
| home [2] 27:2 35:9 | involvement [1] 10:6 | 17:14 26:24 | 8:17 |
| Hoover [1] 8:14 | | lymph [2] 34:16 34:23 | meet [2] 6:20 10:2 |
| hospital [3] 3:23 | -J- | | meeting [4] 6:22 |
| 32:6 32:21 | James [1] 16:13 | | 6:25 9:24 27:6 |
| hospitals [1] 5:15 | January [2] 1:19 | | meetings [3] 10:4 |
| hour [1] 31:13 | 37:23 | | 10:22 27:7 |
| Hurley [2] 26:1 35:21 | John [5] 1:15 2:3 | | melanoma [11] 16:21 |
| Hurley's [1] 36:10 | 3:1 3:21 37:7 | | 18:6 18:24 19:6 |
| HUSBAND [1] 1:7 | joins [1] 9:1 | | 21:16 22:1 22:7 |
| | JUDGE [1] 1:14 | | 25:6 25:7 33:21 |
| | judging [2] 30:22 | | 34:16 |
| | 31:15 | | melena [1] 18:3 |
| | -K- | | member [1] 10:18 |
| idea [3] 26:3 34:17 | keep [2] 6:9 7:22 | | memory [1] 9:24 |
| 36:5 | Kelley [31] 1:26 2:4 | | met [3] 6:5 10:12 |
| ignore [1] 12:2 | 3:4 3:5 6:13 | | 28:3 |
| immediate [1] 8:14 | 7:23 11:19 11:22 | | MICHAEL [1] 1:26 |
| Inappropriate [1] 21:4 | 13:23 20:2 20:22 | | microcytic [1] 10:8 |
| includes [1] 8:4 | | | MIDDLE [1] 1:2 |
| indicate [1] 19:25 | | | might [1] 17:4 |
| | | | Mike [1] 3:5 |
| | | | mind [1] 34:21 |

| -T- | | |
|------------------------|-------|-------|
| taking [2] | 28:20 | 37:8 |
| tells [1] | 15:19 | |
| Ten [1] | 6:23 | |
| testified [1] | | 3:2 |
| testify [1] | 23:7 | |
| testifying [1] | | 7:16 |
| testimony [3] | | 22:19 |
| | 37:7 | 37:20 |
| Thank [7] | 13:19 | 13:21 |
| | 20:3 | 27:24 |
| | 36:19 | 36:20 |
| Thanks [1] | 36:21 | |
| themselves [3] | | 7:2 |
| | 14:11 | 34:25 |
| thought [1] | 31:13 | |
| three [6] | 3:13 | 5:6 |
| | 6:17 | 10:3 |
| | 11:1 | 10:4 |
| through [4] | | 9:2 |
| | 13:8 | 19:21 |
| | | 26:13 |
| times [1] | 10:2 | |
| today [13] | 3:8 | 3:11 |
| | 6:3 | 7:17 |
| | 17:11 | 22:19 |
| | 23:1 | 24:8 |
| | 25:2 | 28:12 |
| Tommy [19] | | 1:6 |
| | 3:9 | 9:24 |
| | 20:10 | 20:14 |
| | 23:12 | 25:23 |
| | 27:6 | 27:8 |
| | 33:19 | 34:18 |
| | 35:10 | 35:25 |
| | | 36:6 |
| too [1] | 13:21 | |
| took [1] | 17:4 | |
| top [4] | 11:4 | 11:9 |
| | 13:3 | 14:8 |
| tough [1] | 9:19 | |
| track [1] | 15:6 | |
| training [2] | | 9:1 |
| | 35:13 | |
| transcribe [1] | | 17:22 |
| transcribed [2] | | 17:25 |
| | 19:2 | |
| transcript [1] | | 35:21 |

14

FALLING SPRING MEDICAL ASSOCIATES**NEW PATIENT INFORMATION RECORD (PLEASE PRINT OR WRITE LEGIBLY)****PATIENT INFORMATION**

| | | | |
|---|--|----------------------------------|--|
| PATIENT'S NAME LAST <u>HALL</u> FIRST <u>TOMMY</u> MI <u>R</u> | AGE <u>43</u> | DATE OF BIRTH <u>5-12-55</u> | SOCIAL SECURITY NO. <u>563-82-5959</u> |
| STREET ADDRESS <u>517 M+ PLEASANT RD</u> | CITY AND STATE <u>FAYETTEVILLE PA</u> | ZIP CODE <u>17222</u> | HOME PHONE NO. <u>717-352-9030</u> |
| PATIENT'S EMPLOYER <u>CRESSLER TRUCKING INC</u> | MARITAL STATUS: SINGLE <input type="checkbox"/> <u>MARRIED</u> <input checked="" type="checkbox"/> WIDOW <input type="checkbox"/> DIVORCED <input type="checkbox"/> | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS <u>1069 SEIBERT AVE</u> | CITY AND STATE <u>SHIPPENSBURG PA</u> | ZIP CODE | |
| IN CASE OF EMERGENCY CONTACT: NAME <u>NANCY HALL</u> | RELATIONSHIP <u>WIFE</u> | PHONE NUMBER <u>717-352-9030</u> | |
| SPOUSE'S NAME <u>NANCY M HALL</u> | DATE OF BIRTH <u>5-28-55</u> | SOCIAL SECURITY NUMBER | |
| SPOUSE'S EMPLOYER <u>HOUSEWIFE</u> | OCCUPATION (INDICATE IF STUDENT) | BUSINESS PHONE NO. | |
| EMPLOYER'S STREET ADDRESS | CITY AND STATE | ZIP CODE | |
| WHO REFERRED YOU TO THIS PRACTICE? <u>Cashdollar</u> | FAMILY DOCTOR | | |

INSURANCE INFORMATION*Dr. Cashdollar's Records*☐ Medicare (Medical Insurance Only)

Medicare Number _____ Effective Date _____

☒ Blue Shield

If Out of State, Identify _____

Address, If Out of State _____

Name of Insured TOMMY B HALL Identification No. PAC 563825959 Group No. 26824000☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Other Insurance _____

Address _____

Name of Insured _____ Policy No. _____ Group No. _____

☐ Medicaid (Medical Assistance)

Recipient Number _____

In order to control our cost of billing, we request that office visits be paid at the time service is rendered. We would rather control our billing costs than be forced to raise our fees.

AUTHORIZATION: I hereby authorize the physician indicated above to furnish information to insurance carriers concerning this illness/accident, and I hereby irrevocably assign to the doctor all payments for medical services rendered. I understand that I am financially responsible for all charges whether or not covered by insurance.

Date 2-23-99Responsible Party Signature Tommy B Hall

CHAMBERSBURG GASTROENTEROLOGY ASSOCIATES, LTD.

120 N. Seventh Street, Suite 201, Chambersburg, PA 17201-1795 • (717) 263-0629

Board Certified
Internal Medicine/Gastroenterology

JOHN G. ENDERS, M.D. • MARK P. DOBISH, M.D. • WAYNE C. HOOVER, M.D.

HALL, TOMMY B.

2/23/99

SUBJ: 43 yo white male with melanoma in 1993. No with a cervical lymph node showing recurrent melanoma. He developed anemia with hemoglobin of 9.5 and MCV of 71. Upper GI showed GE reflux. Barium enema demonstrated a few diverticuli. CT scan demonstrated adrenal mass and possible peri lymph node and a loop of small bowel left lower quadrant seemed thickened. Because of the microcytic anemia further evaluation of colon recommended to rule out neoplastic process. Patient denies hematochezia or alteration in bowel habit. No family history of colon cancer.

OBJ: Patient's physical examination reveals a soft abdomen. Bowel sounds were normal. No masses. Liver and spleen were not enlarged.

ASSESS: Microcytic anemia. Melanoma. Rule out colonic neoplastic process despite negative BE.

RECOMMEND: Proceed with colonoscopy. Discussed the options with the patient. He agrees and will have this scheduled in the near future.

John G. Enders, M.D.

JGE/tml

CC: Dr. Cashuollar

SENT MAR 01 1999

1/1/99

not in

4/5/99
me

4-27-99 left neg. on ans. machine re: hemocult/mf

5/10/99 Positive Hemocult (grossly) 6:60/mf

filled w/BR/SDF 5/18/99 - 11:15 am
if neg will do ESO

10/25/99 Known sent to Dr. Dally. Injunct, Surg, Colon 2:15/99
11/15/99 Records sent to Hallman & Miller - JG

D0183

Referring Physician

Castellano

Date Referred

WT 214 HT 5'6" BP 140/70 P 80 AGE 43DATE: 2/23/99

CHIEF COMPLAINT:

ALLERGIES: NKDA

MEDICATIONS:

Ferrous Sulfate Tqd

PMH:

Anemia

SURGERY:

Spinal X2 89 + 93 Rupt + Her. Disc.

Mal. mole Excised '93

Exc. Bx Deep Cervical Node 1/22/99

SH: OCCUPATION: TRUCK DRIVER

SMOKE: 2ppd

ALCOHOL: NONE

CAFFEINE: Coffee 5 cups a day

Married

1 child:

FH: ↑ MOTHER 62 yr. Healthy

↑ FATHER 65 yr. DM, SKIN Ca

| BROTHERS ↑ HEALTHY

| half
SISTERS ↑ healthy

D0184

12/23/2000

THE CHAMBERSBURG HOSPITAL PATHOLOGICAL REPORT

Pathologists:

Howard L. Hoffman, M.D.
Constancio A. Ramirez, M.D.

| | | | | |
|-------------------|------|---------|---------|-----------|
| Name of Patient: | Age: | Date: | Doctor: | Acc. No.: |
| HALL II, TOMMY B. | 37 | 4/13/93 | HURLEY | S93-2133 |
| | | | | op 332103 |

Specimen:

SKIN LESION LEFT BACK

Diagnosis:

EXCISION SKIN LESION LEFT BACK

Gross:

The specimen consists of an elliptical portion of skin measuring 1.5 x 1.0 x 0.7 cm. There is a flat rounded irregularly pigmented central area. The underlying tissue is grossly unremarkable. The margins are marked and the entire structure is processed.

HLH/KK

r-4/13/93

MICROSCOPIC

Section of skin demonstrates the mid portion with groups of nevus cells in the dermis and at the epidermal-dermal junction. A few groups of melanocytic cells are also present in the superficial layer of epidermis. In one level of section, the cells at the epidermal-dermal junction are elongated and dysplastic. A mild lymphocytic infiltration is present in the underlying stroma. The overall microscopic features are regarded as those of a dysplastic nevus. The surgical margins appear free of tumor involvement consistent with complete removal of the lesion. Follow up is recommended in view of the dysplastic changes noted.

INTERPRETATION: DYSPLASTIC NEVUS, SKIN (BACK).

s-1;b-1 88305
CAR/mlw 4/15/93

Examined by

CA Ramirez M.D.
H.L. Hoffman, M.D.
C.A. Ramirez, M.D.

16

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v.

Case No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

* * * * *

DEPOSITION OF THOMAS J. ANSFIELD, M.D.

Thursday, November 1, 2001

9:00 o'clock a.m.

Reported by: LISA A. CREERON

MADISON **F**REELANCE **R**EPORTERS

131 W. Wilson St.

Madison, Wisconsin 53703

(608) 255-8100

PAGE 1 SHEET 1

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Thursday, November 1, 2001

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PAGE 3

I N D E X

| | | |
|----|--------------------------------|------------|
| 1 | | |
| 2 | Examination by: | Page |
| 3 | Attorney Pedersen | 4/61/67 |
| 4 | Attorney Kelley | 57/66 |
| 5 | Exhibits Nos.: | Identified |
| 6 | 1 - Curriculum vitae | 5 |
| 7 | ***** | |
| 8 | | |
| 9 | | |
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| 15 | | |
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| 17 | | |
| 18 | | |
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| 20 | | |
| 21 | | |
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PAGE 2

2

DEPOSITION of THOMAS J. ANSFIELD, a
witness in the above-entitled matter, taken at the
instance of the plaintiff, wherein Nancy Hall is the
plaintiff and CUNA Mutual Group, et al., are the
defendants, pending in the United States District
Court for the Middle District of Pennsylvania,
pursuant to notice, before LISA A. CREERON, a
Registered Professional Reporter and Notary Public in
and for the State of Wisconsin, at Melli, Walker,
Pease & Ruhly, Attorneys at Law, 10 East Doty Street,
in the City of Madison, County of Dane, and State of
Wisconsin, on the 1st day of November, 2001, commencing
at 9:00 o'clock a.m.

A P P E A R A N C E S

STEPHEN R. PEDERSEN,
Attorney at Law, 214 Senate Avenue, Suite 602,
Camp Hill, Pennsylvania, appearing on behalf of
the plaintiff;

MICHAEL R. KELLEY,
MCNEES, WALLACE & NURICK, Attorneys at Law,
100 Pine Street, P. O. Box 1166,
Harrisburg, Pennsylvania 17108, appearing
on behalf of the defendants.

ALSO PRESENT: MARK RICHARDSON

(Original transcript is filed with Attorney Pedersen)

PAGE 4

4

MR. KELLEY: In terms of
stipulations, I'm fine with the usual
stipulations reserving all objections except as
to the form of the question until the time of
trial, but we would like to read and sign the
deposition transcript.

MR. PEDERSEN: That's fine.

THOMAS J. ANSFIELD, M.D.,
called as a witness, being first duly
sworn in the above cause, testified
under oath as follows:

E X A M I N A T I O N

BY MR. PEDERSEN:

Q Dr. Ansfield, please state your full name for the
record.

A Thomas J. Ansfield.

Q Where are you currently employed?

A I am a partner and an internist and cardiologist at
Associated Physicians, LLP in Madison, Wisconsin.

Q Are you a practicing cardiologist?

A I am a practicing internist. I'm a specialist in
internal medicine with subspecialty training in
cardiology.

Q You've provided a curriculum vita. Is this a current

PAGE 5 SHEET 2

5

1 CV?

2 A Yes, it is.

3 MR. PEDERSEN: I'd like to have

4 this marked as Exhibit 1 to the deposition.

5 (Exhibit 1 is marked for identification)

6 Q Could you briefly review for the record your medical

7 background starting with the most recent and working

8 backwards or the other way if it's easier?

9 A I am currently a practicing physician, but I'm also

10 consulting medical director to the CUNA Mutual Group

11 in Madison, Wisconsin.

12 I'm a clinical professor of medicine at the

13 University of Wisconsin, where I participate in

14 undergraduate and graduate training. I also do

15 postgraduate teaching for the University of

16 Wisconsin.

17 I have a long history of a relationship with

18 CUNA Mutual Group. I've been consulting medical

19 director since September 1, 1993. Previously I was

20 consulting medical director for the Rural Insurance

21 Companies for a 25-year period.

22 Q As the medical director for CUNA -- is it pronounced

23 CUNA or CUNA?

24 A CUNA, like cue ball.

25 Q As the medical director for CUNA, what are your job

PAGE 6

6

1 duties today?

2 A I have a number of responsibilities, which include a

3 consultation to the business lines for CUNA Mutual

4 Group. In this regard I review underwriting

5 questions from a series of insurance products that

6 they have that include life insurance, disability

7 insurance, mortgage insurance, international

8 insurance.

9 I am also a consultant to the claims personnel,

10 who review credit disability claims. And finally I'm

11 a consultant to the organization and participate in

12 programs for health and wellness for the employees of

13 the CUNA Mutual Group.

14 Q What other medical doctors besides yourself are

15 included within those who are consulted specifically

16 for claims questions?

17 A I'm the only consulting medical director. There are

18 times where I will recommend that independent medical

19 reviews are provided. But at present I'm the only

20 medical consultant for the CUNA Mutual Group that's

21 on site at CUNA Mutual.

22 Q And was that also true for 1998 through the present?

23 A That is correct.

24 Q Who keeps the statistical data, if statistical data

25 is kept, with respect to claims that are sent for

PAGE 7

7

1 review to the medical director such as yourself?

2 A The individual business lines would be responsible

3 for any recordkeeping. I would not personally keep a

4 record of that information.

5 Q With respect to the mortgage insurance line, they

6 would keep their own records statistically with

7 respect to the times that you were involved in

8 reviewing claims?

9 A That is correct.

10 Q What is the name of the individual that's in charge

11 of the mortgage insurance division that would have

12 that statistical information?

13 A Can we go off record for a minute?

14 Q Sure.

15 (Discussion off the record)

16 A I'm not sure of the name of the current manager. I

17 work specifically with a number of claims individuals

18 on an intermittent basis.

19 Q With respect to mortgage insurance claims, who are

20 those individuals that you work with?

21 A Brenda Larson and William Nardi, N-A-R-D-I.

22 Q As an internist, what training have you had with

23 respect to diagnosis of melanoma?

24 A As an internist, my training included rotations in

25 dermatology services during my residency at the

PAGE 8

8

1 University of Wisconsin. The years of the residency

2 were 1967 through 1970.

3 As a practicing internist, I participate -- I

4 conduct physical examinations on an average of two

5 per day. Part of the evaluation includes an

6 evaluation of the skin or the cutaneous system. On

7 average I will conduct 200 examinations yearly that

8 would include examination of the cutaneous system.

9 On an average once or twice yearly our hospital

10 grand rounds will include a dermatologic update where

11 new information concerning either diagnosis or

12 treatment of skin lesions is evaluated.

13 Q As part of your practice as an internist, would you

14 also remove moles?

15 A No, sir, I do not. Patients who have suspicious

16 lesions are referred to dermatologists in the City of

17 Madison or in physician groups that are required

18 providers based on the individual's insurance.

19 Q As part of your practice, do you review pathology

20 reports following the removal of moles?

21 A I review the written pathology reports. I do not

22 personally conduct a microscopic evaluation of the

23 slides.

24 Q You don't take resections or review resections?

25 A No, sir.

9

1 Q You rely on the pathology reports?

2 A That is correct.

3 Q Is that standard in the practice for internists such

4 as yourself to rely on pathology reports with respect

5 to moles specifically?

6 MR. KELLEY: Objection. He's not

7 here to testify as an expert witness or about

8 the standard of care. You can answer. Go

9 ahead.

10 A Could you repeat the question?

11 Q Sure. An internist such as yourself, is it typical

12 or traditional for you to rely on pathology reports?

13 A That is correct. That is the standard of care.

14 Q In the last five years when was the last time that

15 you diagnosed melanoma?

16 A I've diagnosed two suspicious lesions subsequently

17 determined to be melanoma within the last six

18 months. Within the last five years, approximately 10

19 of my patients were referred who were subsequently

20 found to have melanoma.

21 Q Are you aware of the term dysplastic nevus?

22 A I am.

23 Q Medically what does that term mean to you?

24 A A dysplastic nevus is a dermatologic condition in

25 which there are cells that have abnormal pigment.

10

1 While the majority of dysplastic nevi are found to be

2 benign, there is a concern in an individual if there

3 are -- if there is a family history of melanoma, skin

4 cancer or dysplastic nevi since an individual who is

5 diagnosed with a dysplastic nevus may carry

6 additional risks for developing either other

7 dysplastic nevi or the condition can degenerate into

8 a more serious condition known as malignant melanoma.

9 Q Is the pathological finding of a dysplastic nevus

10 identical to a finding of cancer?

11 A No, it is not.

12 Q What is the difference?

13 A The difference is that while both conditions are

14 considered a skin tumor, one condition, dysplastic

15 nevus, if followed appropriately and if there is not

16 a family history of either dysplastic nevi or

17 melanoma, usually does not cause ongoing medical

18 problems.

19 Q If in one of your patients you had a pathology report

20 that had a diagnosis or finding of dysplastic nevus,

21 would you report to that patient that they had

22 cancer?

23 MR. KELLEY: Objection, calls for

24 speculation. Go ahead, you can answer it.

25 A I would inform the patient of the potential risks and

11

1 would obtain additional history. I would also

2 arrange to have that patient followed by a

3 dermatologist or if a dermatologist is not available,

4 a surgeon in the area who is skilled and trained in

5 following these conditions appropriately, especially

6 in an individual who may have a family history of

7 melanoma or a family history of dysplastic nevus.

8 I think it's crucial to stress the need to

9 obtain follow-up. In my patients I also will

10 evaluate the patient on an every six to 12-month

11 basis to make sure that there are no changes

12 surrounding the site of excision of the original skin

13 problem, but I would also look for new lesions and

14 instruct a patient to -- and this is done by letter,

15 to evaluate their skin at least once monthly to look

16 for new lesions.

17 I also instruct patients to have their spouse or

18 another individual examine areas that they may not be

19 able to see because of the skin location. Example,

20 back, lower parts of the posterior body where you

21 cannot see the areas directly.

22 Q And I'm sorry, Doctor, let me go back to the

23 question. If you received a pathology report that

24 had as its finding dysplastic nevus, would you report

25 to the patient at that time that he had cancer?

12

1 A No, I would not.

2 Q Why?

3 A Because I don't feel that that in itself is a

4 cancer. I must stress, though, that in patients who

5 are considered at risk, this patient also needs to be

6 informed that the patient may be at additional risk

7 at some point in the future for developing other nevi

8 of malignant potential.

9 Q What about a microscopic finding that within the mole

10 there were melanocytic cells, what's the significance

11 of that?

12 MR. KELLEY: Again let me just

13 interpose a couple of objections. First of all,

14 I think we're still on this question of what

15 would you do in the event one of your patients

16 presented with these symptoms, and that's

17 objectionable, calls for speculation.

18 It's also objectionable because you're

19 getting into really sort of expert testimony.

20 We agree to waive all objections except as to

21 form at time of trial, so I'm going to let him

22 answer, so I just want to put that on the

23 record.

24 MR. PEDERSEN: Certainly. We

25 certainly believe that these questions aren't

1 objectionable and that these were the specific
2 findings on the '93 pathology report, and it's
3 both relevant and nonspeculative and this doctor
4 himself has testified he has diagnosed melanoma
5 and is familiar with these terms in his everyday
6 practice.

7 MR. KELLEY: Go ahead.

8 A The question?

9 Q This question relates to melanocytic cells and the
10 significance of a microscopic finding of melanocytic
11 cells within the mole itself.

12 A I can best answer this by describing a situation that
13 one of my patients was involved with several years
14 ago. Melanocytic cells means that there is
15 melanin-containing components within the cells.

16 Let me state that I'm not a pathologist, and nor
17 do I pretend to be an expert on these lesions, but if
18 I see that an individual has melanocytic cells and
19 the diagnosis of dysplastic nevi -- nevus is made, my
20 concern as an example, the case that I'm discussing,
21 I was concerned because the lesion was growing
22 rapidly, had changed character, and despite the
23 diagnosis, I suggested that additional evaluation be
24 done of the pathologic specimen to make sure that
25 indeed the diagnosis was dysplastic nevus. In the

1 case I'm referring to, the case was subsequently
2 found to be an early stage of melanoma.

3 That would set up an entirely different protocol
4 of need for evaluation of that patient, specifically
5 by a dermatologist and in this area a dermatologist
6 who is a specialist in pigmented lesions that may go
7 on to develop melanoma.

8 Q The finding in a microscopic pathology report of
9 melanocytic cells, is that equivalent to cancer?

10 A No, it is not.

11 Q Why isn't it?

12 A Again I'm not a pathologist. For me as an internist,
13 it raises the question and I frame that in what the
14 individual case is if, for instance, it's a small
15 lesion, it has not been growing, but it has irregular
16 borders, which can be seen in either a melanoma or in
17 a dysplastic nevus.

18 If there is a rapidly growing lesion, it may
19 have another impact and at least raises my antenna to
20 say this may be something other than the pathology
21 report shows, and I would request a review by a
22 different pathologist.

23 Q With respect to Mr. Hall, have you reviewed the 1993
24 pathology report from Chambersburg Hospital?

25 A Yes, I have.

1 Q When did you first review that?

2 A My memory is that I first reviewed this on
3 December 9th, 1999. It was on that date that I
4 received an underwriting risk evaluation worksheet
5 following a claims review on the deceased,
6 Mr. Tommy Hall, who expired in 1999. Following that
7 claim, the case was referred to me.

8 Q And did you review the 1993 pathology report?

9 A I did.

10 Q And you have that report in front of you right now?

11 A I do.

12 Q Can you tell us on that pathology report what the
13 pathologist's interpretation was of the mole that was
14 removed?

15 A Dysplastic nevus, skin (back).

16 Q Do you have any information as you sit here today to
17 contradict that interpretation?

18 A I do not.

19 Q Is there anything in the pathology report that in
20 your mind indicates that there was a cancer that was
21 removed in 1993?

22 A No, I do not.

23 Q Did you review all of the medical records that --
24 this is going to get a little bit complicated. Let
25 me just ask what medical records you reviewed as part

1 of your evaluation in the underwriting claim.

2 A In my initial review, I reviewed the biopsy report
3 and the outpatient records from the Chambersburg
4 Hospital in Chambersburg, Pennsylvania. The
5 outpatient report lists a surgical procedure
6 conducted by Dr. James E. Hurley, which was conducted
7 on March 13th, 1993.

8 Q The surgical report in the record that you're
9 referring to now, is there any indication on that
10 record that there was a cancer that was removed from
11 Mr. Hall?

12 A The report lists that Mr. Hurley -- that Dr. Hurley
13 conducted the procedure on referral from
14 Dr. George Baker, and I did not have a report from
15 Dr. Baker.

16 Q Let me ask the question again. Is there anything
17 from the '93 contemporaneous records with the
18 surgical procedure of the removal of the mole that
19 indicates that any form of cancer was developing in
20 Mr. Hall?

21 A No, there is not.

22 Q What other records did you review?

23 A I reviewed the records of Dr. Charlesworth, is that
24 correct?

25 Q Yes.

1 A Which was an intake record dated April 30th, 1998.
 2 Q What of significance did you see in that record?
 3 A In that record I see a history that while Mr. Hall
 4 was evaluated for leg pain, Dr. Charlesworth obtained
 5 a past medical history. Included in that history was
 6 question mark -- "? melanoma removed, back, 1996."
 7 Q Do you know now as you sit here whether the '96 year
 8 was accurate with respect to the removal of anything
 9 on Mr. Hall's back?
 10 A In retrospect, yes, there is a question here of
 11 whether or not that referred to the lesion that was
 12 removed in April of 1993, but there is no name of a
 13 physician. So at that point I questioned whether or
 14 not we were dealing with one lesion or two lesions,
 15 one that was removed by documentation -- as
 16 documented in an outpatient record from the hospital
 17 or whether or not there was a second lesion that was
 18 removed in 1996.
 19 Q Besides the April 30th, 1998 reference to a '96
 20 event, do you have any other medical records or
 21 reference to a '96 mole removal?
 22 A No, I do not.
 23 Q The entry on April 30th, 1998, do you personally
 24 know as you sit here whether that was the doctor's
 25 own thoughts and impressions or information conveyed

1 to him by Mr. Hall?
 2 A I cannot make a determination of that. Two possible
 3 scenarios, one, and the one that subsequently was
 4 considered likely was is that the patient, Mr. Hall,
 5 stated that he had a melanoma removed.
 6 It is also possible that the doctor, hearing
 7 that -- and again this is my supposition -- that a
 8 pigmented mole was removed, that the doctor may have
 9 written the term melanoma. I can't be sure.
 10 Q And when you assisted in making the decision about
 11 coverage and benefits and rescission of a policy, you
 12 were equally unsure, weren't you?
 13 MR. KELLEY: Objection. You can
 14 answer.
 15 A I was unsure, but subsequent records that were
 16 obtained following Dr. Charlesworth's referral of
 17 Mr. Hall on December 11th, 1998 for an evaluation of
 18 a lump that developed in the lateral portion of the
 19 neck, the patient was referred to a Dr. Chicklo, who
 20 evaluated the patient on January 22nd, 1999.
 21 Dr. Chicklo's history included the presence of a
 22 malignant mole which was excised in 1993 on his back.
 23 Q Now, at that point what's the date of that report?
 24 A January 22nd, 1999.
 25 Q That was after -- several months after Mr. Hall had

1 already completed the application form for insurance,
 2 wasn't it?
 3 A That is correct. If I may, I would like to go back
 4 to the December 11th, 1998 note. Dr. Charlesworth's
 5 history describes that the lump on the neck had
 6 occurred -- let me correct that -- was discovered by
 7 the patient at least several weeks prior to the
 8 evaluation of December 11th, 1998. To me this raised
 9 the possibility that the lesion or lump was
 10 discovered on or about the time of the application.
 11 Q Now, are you saying you would have expected Mr. Hall
 12 to make his own diagnosis of cancer upon the
 13 discovery of a lump in his neck?
 14 A I don't think that that would be possible for a
 15 layperson to make a determination as to what the lump
 16 was. All I am saying is that it appears that
 17 Mr. Hall discovered a lump, as stated, several weeks
 18 before the December 11th, 1998 visit. Mr. Hall's
 19 application for insurance was November 18th, 1998.
 20 Q You don't have any records, do you, or any
 21 information to establish that Mr. Hall knew he had
 22 cancer on November 18th, '98, do you?
 23 A No, I do not.

MR. KELLEY: Objection to the
 form of the question.

1 Q Let me rephrase the question to address the
 2 objection. Do you have any information that on
 3 November 18th, 1998 Mr. Hall knew he had cancer?
 4 A No.
 5 MR. KELLEY: Same objection.
 6 Q Have you reviewed subsequent to your initial and
 7 second review the depositions that were taken in the
 8 underlying medical malpractice case?
 9 A No.
 10 Q Are you aware that depositions were taken with
 11 respect to the pathologist who did the gross
 12 inspection and the microscopic inspection?
 13 A No.
 14 Q Were you aware that the deposition was taken of the
 15 surgeon who removed the mole in '93?
 16 A No.
 17 Q Were you aware that those are available and your
 18 counsel has those?
 19 A No.

THE WITNESS: I'm aware -- I mean
 do you have copies?

MR. KELLEY: Yeah. For the
 record, they were supplied in the last couple
 weeks.

MR. PEDERSEN: That's correct.

21

1 Q Is it consistent with your testimony that Dr. Hurley
2 testified on Page 48 of his transcript that he
3 would -- that he found a dysplastic nevus that was
4 not cancer and that the lesion had been completely
5 removed?

6 MR. KELLEY: Object to the form.

7 You can answer.

8 Q Is that consistent with your understanding of the
9 pathology report and the events that happened?

10 A I can't make a statement on that. I've not seen the
11 deposition.

12 Q Did you have an authorization in your possession at
13 the end of 1999 when you were evaluating this
14 potential claim to obtain medical records?

15 A It was my request to obtain additional medical
16 records. Following the discovery of the hospital
17 records as well as the initial evaluation conducted
18 by Dr. Charlesworth, I requested that we obtain
19 medical records from all physicians caring for the
20 patient from 1993 until the time of the decedent's
21 death.

22 Q Didn't you specifically instruct Ms. Larson to obtain
23 the records from the treating doctor who removed the
24 mole in '93?

25 A I did.

22

1 Q Do you know whether she ever obtained those?

2 A It's my understanding that she requested those
3 records and that those were the records of a Dr. --
4 Hurley?

5 A -- Hurley.

6 Q I'm sorry, I didn't mean to put words in your mouth.
7 I'm trying to help you. There are a number of
8 doctors involved.

9 A There are a number of doctors involved, thank you.
10 And Dr. Hurley and we -- it's my understanding that
11 Ms. Larson was told that the records were either
12 displaced or lost.

13 Q From a doctor to a doctor, from yourself to
14 Dr. Hurley, could you have called him with the
15 authorization that you had?

16 MR. KELLEY: Objection. I don't
17 think it's been established that there was an
18 "authorization."

19 Q Let me -- did you obtain records based upon an
20 authorization?

21 A I believe records were obtained. It would not be an
22 authorization that I would request. It would be an
23 authorization that would be requested by our claims
24 personnel.

25 Q And do you know whether or not medical records are

23

1 only released pursuant to authorizations of the
2 patient?

3 MR. KELLEY: Objection, calls for
4 a legal conclusion.

5 Q Now, as a doctor, your office releases records all
6 the time, doesn't it?

7 A That is correct.

8 Q And you know the protocols required to release
9 records?

10 A Protocol is we receive a written authorization in
11 order to release medical records.

12 MR. KELLEY: Same objection.

13 He's answered.

14 Q Let me show you the CUNA Mutual letter, and this was
15 the letter that was sent to each of the treating
16 doctors after Mrs. Hall provided their addresses. Do
17 you recognize that to be a CUNA Mutual letterhead and
18 letter going to doctors requesting records?

19 A Yes, it is.

20 Q And what's duplicated at the bottom of that letter?

21 A Duplicated is a signed authorization from the
22 applicant at the time -- obtained at the time of
23 application signed by the decedent, Tommy Hall, and
24 his wife.

25 Q And how long does that application remain in force?

24

1 Can you tell? Does it list 30 months? It's fine
2 print, I know.

3 A You have stronger glasses. Wait a minute. Off the
4 record.

5 Q Let me quote from the third line towards the right, a
6 sentence that states, "I agree that this
7 authorization shall be valid for 30 months from the
8 application date."

9 MR. KELLEY: We'll stipulate.

10 MR. PEDERSEN: You'll stipulate
11 that it was valid for 30 months.

12 A Okay.

13 Q Did you know that records had been obtained pursuant
14 to an authorization of the insured?

15 A Yes, we received a number of records that were
16 obtained, which included the medical records from a
17 number of physicians, including Dr. Charlesworth. Do
18 you want me to list them all?

19 Q No, no, that's fine.

20 A Okay.

21 Q Did you have an understanding that an authorization
22 existed with CUNA to obtain medical information that
23 would have also covered making a phone call?

24 A Yes, when records were not obtained, it is my
25 understanding, and this is information that I

1 recently was provided, from several of the doctors
2 who were contacted, these included the original
3 doctor who referred Mr. Hall to Dr. Hurley, and that
4 is Dr. Baker.

5 A call was made from one of our staff members,
6 Judy Baker, on January 6, 2000 in which Dr. Baker's
7 office informed her that she had -- that Dr. Baker
8 had not seen the patient since 1989. Therefore, it
9 did not appear that there were records from that
10 physician, although that was the physician named as
11 the referring physician to Dr. Hurley.

12 Q Doctor, if I may, let me address my questions
13 about -- concerning Dr. Hurley's records. Did you
14 understand at the time the application for benefits
15 was made and your evaluation was taking place that
16 CUNA never obtained the records from Dr. Hurley's
17 office?

18 A That is correct.

19 Q Did you recommend at that point that someone or
20 perhaps yourself call Dr. Hurley and speak with him
21 about the '93 mole that was removed?

22 A I did not. That is normally the responsibility of
23 the claims personnel to obtain records subsequent to
24 an evaluation of the case. But it was my
25 understanding that the file was not available.

1 Q Apart from the file, would you have expected someone
2 to attempt to speak to the doctor to find out what
3 that mole was, whether it was cancerous, that was
4 removed in '93?

5 A Not usually.

6 Q Did you have any information at the time of the
7 attempt to obtain Dr. Hurley's records that an
8 attorney was involved in Harrisburg and the records
9 had been sent to that attorney?

10 A At that time, no. This is information that was
11 subsequently obtained on -- by one of our staff
12 people. I believe the caller was Barb, the last name
13 is not given, that first a call was made on -- let me
14 go back.

15 A call was made on January 31st, 2000 to
16 Dr. Hurley's office, that there was a request for
17 medical records and the response was his file,
18 meaning Mr. Hall's file, cannot be found. They have
19 misplaced or lost the file. And then there is a
20 notation that an attorney is involved.

21 There's another notation dated 2-1-2000 with the
22 name Barb, four pages, to attorney in Harrisburg.
23 Ever since they cannot locate file.

24 Q So you made no additional efforts to obtain
25 information directly from Dr. Hurley?

1 A No, I did not.

2 Q You didn't recommend that any additional steps be
3 taken to obtain information from Dr. Hurley?

4 A I was not contacted after that time concerning those
5 records.

6 Q Yet it was your initial request for Dr. Hurley's
7 records that started that process?

8 A It was my initial --

9 Q Advice.

10 A -- request to obtain and advice. It is advice
11 because I provide consultation to the company, a
12 request to obtain all medical records from all
13 physicians who were treating that patient so that we
14 could get an idea of exactly what was going on here.

15 Remember that there was a question of two dates
16 involved. One was a documented record of removal of
17 a mole in April of 1993, and secondly, we had a
18 notation by Dr. Charlesworth that there was the
19 possibility at least of a mole that was removed in
20 1996.

21 Q And through obtaining those records, we found out
22 that there wasn't any additional information about
23 anything removed in '96, isn't that right?

24 A That is correct.

25 Q So then the only issue was -- remaining was about the

1 April '93 mole?

2 A That is correct.

3 Q And the person who removed the mole did not provide
4 medical records?

5 A That is correct.

6 Q And to your knowledge, neither you nor no one at CUNA
7 attempted to speak with him directly about those
8 records?

9 A That's correct.

10 Q And at that time the CUNA records reflect that
11 Dr. Hurley's records were sent to an attorney in
12 Harrisburg?

13 A That is correct.

14 Q And there's nothing in the record to indicate that
15 any additional effort was made to obtain the records
16 from that attorney in Harrisburg, is that right?

17 A That's right.

18 Q The ultimate CUNA decision to rescind the policy or
19 to deny benefits was made without Dr. Hurley's office
20 records, isn't that correct?

21 A That's correct.

22 Q And the decision was based upon the April '93 mole?

23 A That's correct.

24 Q And the failure of Mr. Hall to indicate on an
25 insurance application form that that mole was

29

1 cancerous?

2 A There were two comments on his application that
3 raised concern. And I would like to refer to his
4 application. In his application he was asked a
5 question, have you ever been treated or diagnosed by
6 a member of the medical profession as having any of
7 the following. The one question was cancer.

8 And subsequent medical records obtained after
9 the diagnosis of melanoma show that each physician,
10 including an oncologist and specialty physicians who
11 evaluated the patient listed the 1993 lesion as
12 either a malignant melanoma, a melanoma or a
13 malignant mole. We did not have the medical records
14 of either the referring physician to Dr. Hurley, who
15 is Dr. --

16 Q Baker?

17 A -- Baker, nor do we have the medical records of
18 Dr. Hurley from that date. The other medical
19 condition that Mr. Hall denied having was a back
20 condition.

21 So it raised the question of a possible
22 misrepresentation since two questions were answered
23 negatively even though, number one, he did have a
24 back condition, and based on the information that we
25 had from information following the removal of the

30

1 mole, the information listed the condition of a mole
2 that was removed in 1993 as being a malignant
3 melanoma.

4 Q Are you aware of a February 10th, 2000 letter sent by
5 CUNA indicating the reasons for the refusal to pay
6 benefits under the policy? Are you aware of that
7 letter?

8 A I'm not sure. I'm not sure, let me review it. Yes,
9 I've seen this letter.

10 Q That letter is from CUNA Mutual?

11 A That is correct.

12 Q And does that letter indicate the reasons why
13 benefits were not being paid under the policy?

14 A The letter is a letter to the decedent's wife,
15 Nancy Hall, and the letter states that the policy was
16 being rescinded, and it was based on the following
17 reason. The review showed that -- this is quotation,
18 "The review showed that Tommy visited a doctor in
19 1993. On the application Tommy did not list the
20 visit had occurred. Had we known about the medical
21 condition revealed during this visit, we would not
22 have accepted the application or issued a certificate
23 of insurance."

24 Q There's nothing in that letter about a back problem
25 or failure to indicate anything about his back, is

31

1 there?

2 A No, it is not -- no, it does not.

3 Q Is that something more recent that you've developed
4 in reviewing the medical records?

5 A It was one of the pieces of information that we had
6 in early 2000 that at least raised a question of
7 whether an inaccurate or a misleading application was
8 given at the time of the application.

9 Q The back problems had nothing to do with the actual
10 rescission or denial of benefits, did it?

11 A That's correct.

12 Q In fact --

13 MR. KELLEY: I'm going to object
14 to the form of the question. He's testified
15 that it played a role in their -- he testified
16 to the role that it played, and now you're
17 characterizing it as playing no role. If you
18 want to ask him is there anything about the back
19 problem in that letter, he's answered no.

20 Q Would you expect CUNA Mutual -- you've worked with
21 them for some time, you're their medical director --
22 to completely and accurately tell an insured why
23 they're not paying benefits under a homeowner's
24 policy?

25 A I would expect that they would provide information to

32

1 claims to the decision that was made. There may be
2 certainly a difference of style as to the
3 technicalities.

4 I don't know what other term to use -- of a
5 diagnosis, but the information provided generally
6 will give a sense of why an application -- why an
7 underwriting decision is made.

8 Q And the sense that you're referring to in this
9 February 10th letter is the '93 doctor visit and
10 information about the mole, isn't that right?

11 A That's correct.

12 Q Besides the information that you've already provided
13 to me about your involvement, is there anything else
14 or any other part of the records that you were
15 involved with that we haven't gone over?

16 MR. KELLEY: Object to the form.

17 A I'm not sure what you are asking.

18 Q Do you have any other notations in the record in your
19 own handwriting or letters from you that we haven't
20 reviewed?

21 A No, sir.

22 Q Did you author a letter dated August 24th, 2001 to
23 Mark Richardson concerning this claim?

24 A Yes, I did.

25 Q Who prepared that letter, you or Brenda Larson?

1 A Brenda Larson did.

2 Q What's the purpose of this letter?

3 A The letter describes, first of all, our decision to
4 rescind the coverage for Mr. Tommy Hall. It was my
5 suggestion that we describe in the letter that this
6 indeed is a home mortgage protection policy. What
7 this policy is is a policy with limited underwriting
8 restrictions, and the policy can be issued as
9 either -- as a standard policy only.

10 Our only other choice is to decline a product.
11 If an individual has certain risks that exceed a
12 certain minimal limit, it is our policy to not
13 provide coverage to an individual.

14 The importance of that is that in the case of
15 Tommy Hall, there was information we did not have.
16 Specifically we did have a diagnosis of a pathologic
17 diagnosis of a dysplastic nevus, which was resected
18 in 1993. However, we also had information that there
19 possibly was another mole removed in 1996. We did
20 not have the records of the initial physician, and
21 let me tell you that is important as a consultant to
22 an insurance company such as CUNA Mutual Group.

23 A dysplastic nevus in itself may not be a risk,
24 but then we need to obtain additional information to
25 determine whether or not we can provide a standard

1 issue only policy, in other words, one with very
2 minimal risks that we can either accept or decline.
3 And one of it is to obtain information of what
4 happened after the diagnosis was made.

5 There are two physicians that we knew who were
6 involved prior to the case. One was the referring
7 physician, Dr. Baker, as listed on the hospital
8 record, and the other was Dr. Hurley. Dr. Baker told
9 us that there are no records after 1989. The
10 importance of that to me is, well, then the decedent,
11 Mr. Tommy Hall, had not obtained medical review by
12 that physician.

13 Secondly, Dr. Hurley stated that the records
14 were lost, so I did not have information as to
15 what -- whether this individual was followed up or
16 evaluated, and the importance of that is that, first
17 of all, that is standard care.

18 Q To maintain records?

19 A To maintain records. And secondly, we add additional
20 risk debits to an individual who does not receive
21 appropriate care or follow-up care from -- for a
22 condition such as a dysplastic nevus.

23 So if I had that information, if I had
24 information of a dysplastic nevus at the time of the
25 initial application, my recommendation would be to

1 our underwriters obtain additional information. And
2 the reason is I need to make sure first how the
3 lesion presented, second, was appropriate follow-up
4 care given, third, determine if there is a family
5 history of skin cancer, melanoma, dysplastic nevi
6 because those may add additional points that would
7 render the condition of dysplastic nevus itself as a
8 condition which we may not accept or not provide
9 coverage to an individual applying for insurance. So
10 that's why that was important information to me.

11 Q What was the reason that the August 24th, 2001
12 internal memo was written to the legal department?

13 A It was a memo describing that after review of this
14 rescission, we put a listing of what processes we did
15 in making a determination to rescind the policy on
16 Mr. Tommy Hall.

17 Q Did you have an understanding at that point that
18 legal action was contemplated by the Hall family?

19 A Only in that there was a lawyer involved based on the
20 fact that records had been sent to a lawyer, and I
21 did not know if there was an active case at that
22 time.

23 Q Brenda Larson didn't tell you -- sorry, go ahead.

24 A Let me correct that. I thought this was in the year
25 2000. This is in August of 2001. At that point I

1 did know that there was legal action entertained by
2 the family of Mr. Tommy Hall.

3 Q Who asked you to prepare this letter after you knew
4 legal action was contemplated by the Hall family?

5 A I wasn't asked to prepare it. Brenda Larson prepared
6 the letter, and I added or corrected information
7 after the letter was prepared. So I can't answer
8 that question.

9 Q At the time the letter was prepared, you understood
10 legal action was being contemplated?

11 A That's correct.

12 Q And there's nothing in the August 24th, 2001 internal
13 memo to the legal department concerning the back, is
14 there?

15 A No, there is not.

16 Q Attached to that legal memo is a tumor rating guide.
17 Who provided that to your legal department?

18 A That was provided by Brenda Larson.

19 Q Are you familiar with a tumor rating guide?

20 A I am.

21 Q Is it an insurance document?

22 A Yes. Every insurance company that I have personally
23 worked with uses tables from reinsurance companies
24 which provide an even broader picture for someone
25 such as I who is a medical consultant to an insurance

1 group of what potential risks an individual has if
 2 they develop a certain condition.
 3 Q Did you have this tumor rating guide available to you
 4 in the end of 1999 when the claim was being
 5 evaluated?
 6 A Yes, I did.
 7 Q Did you consult or review this tumor rating guide?
 8 A Yes, I did.
 9 Q At that time?
 10 A That is correct.
 11 Q What information does the internal insurance document
 12 provide with respect to a pathological finding of
 13 dysplastic nevus?
 14 A After -- it lists a statement stating that, "After
 15 reviewing the records we received, the 1993 pathology
 16 report indicates dysplastic nevus, skin (back) with a
 17 few groups of melanocytic cells." It recommended
 18 review in view of the dysplastic changes.
 19 In addition, the April 1998 visit noted "?
 20 melanoma removed, back, 1996." And with that
 21 information, we would normally decline the policy,
 22 and there's two ways that can occur. Either we would
 23 send a letter stating that we would not accept the
 24 application or we would send a letter stating that we
 25 are postponing application unless you provide

1 additional information from your treating physicians.
 2 Q What does the tumor rating guide attached to the memo
 3 and that you have available and I believe you
 4 testified in fact reviewed before the insurance
 5 company's decision to deny benefits under the policy
 6 with respect to dysplastic nevus?
 7 A On Page 5 of the tumor rating manual, it lists
 8 dysplastic nevus syndrome.
 9 Q It also lists dysplastic nevus and dysplastic nevus
 10 syndrome, doesn't it?
 11 A That is correct, thank you.
 12 Q What information is provided on this internal
 13 insurance document with respect to a finding of
 14 dysplastic nevus?
 15 A It lists that if an applicant has a dysplastic nevus,
 16 that there is no additional rating required in
 17 consideration of the pathologic report. But it also
 18 lists that if other members with dysplastic nevi
 19 have -- if other members of the family of the
 20 applicant have a dysplastic nevi, there is a
 21 substandard rating that is applied, and the rating is
 22 an additional amount of what we call debits, and the
 23 amount of debits is considered plus 50.
 24 Q Did you have any information on November -- that on
 25 November 18th, 1998 whether any of Mr. Hall's family,

1 any family members had ever been diagnosed with
 2 dysplastic nevi?
 3 A We know that there is a family history of skin
 4 cancer, but I do not know if that skin cancer
 5 represents dysplastic nevi, melanoma or other forms
 6 of skin cancer.
 7 Q What document shows the family history of skin cancer
 8 that was available in 1998? I'm dating to the time
 9 that Mr. Hall filled out the insurance application
 10 form.
 11 A I have no information as of 1998.
 12 Q So you have no information about whether or not CUNA
 13 Mutual would have insured Mr. Hall with a finding of
 14 dysplastic nevus only?
 15 A On the basis of dysplastic nevus only, but the other
 16 vital piece of information that I did not have is
 17 whether or not Mr. Hall had received appropriate
 18 medical follow-up.
 19 Q Is there a rating anywhere on this chart for
 20 appropriate medical follow-up?
 21 A Yes, there is.
 22 Q Where is that?
 23 A Additional considerations. With no follow-up by a
 24 dermatologist or attending physician for two or more
 25 years, there's an additional risk rating of 50

1 percent.
 2 Q And do you know whether or not Mr. Hall had been
 3 following with Dr. Charlesworth in the months
 4 preceding the application?
 5 A I had no information. Number one, Mr. Hall did not
 6 see Dr. Charlesworth as far as I understand until
 7 April of 1998.
 8 Q We can stipulate that's the date of a visit, yes.
 9 A Right. But the information I did not have and it
 10 raised a question that if Mr. Hall had a diagnosis of
 11 dysplastic nevus at the time of application, and this
 12 is -- let me give you a scenario I really would want
 13 to know is, one, what was the initial visit -- how
 14 the initial lesion was discovered by the attending
 15 physician, and secondly, what kind of follow-up was
 16 available on that individual.
 17 Q And you don't know the answers to any of those
 18 questions as you sit here today?
 19 A That -- as of today?
 20 Q As of today, the follow-up that Mr. Hall had
 21 medically following the removal of the '93 -- between
 22 the '93 removal and the April '98 Charlesworth
 23 visit.
 24 A Within the last few days I was provided information
 25 that showed that he had been seen by, I believe,

41

1 Dr. Hurley subsequent to the removal of the mole in
2 1993.
3 Q So there had been follow-up from the physician?
4 A Right. That was not information that was available
5 at the time of the -- our initial decision.
6 Q With the follow-up that he had, then no additional
7 points would be added, isn't that correct?
8 A That is correct.
9 Q And so with no additional points being added --
10 A Correct -- excuse me. Within the last few days we
11 also found out, I was provided information that he
12 had been seen by other physicians subsequently and
13 that there was a family history of skin cancer.
14 Again that was not information that we had or was
15 made available to me at the time of my review in 1999
16 or in early 2000.
17 Q Do you know when the first presentation by a family
18 member of skin cancer was or of any form of cancer?
19 A No.
20 Q You don't know whether it was '98, '99, 2000?
21 A No.
22 Q So it could have been after the time he filled out
23 the application?
24 A Certainly.
25 Q So you have no basis as we sit here today to add

42

1 additional points to Mr. Hall?
2 A That's correct.
3 Q And the pathological finding that we did have from
4 '93 listed dysplastic nevus and no additional points
5 were indicated for that, isn't that right?
6 A For the condition itself.
7 Q Yes.
8 A But again we had no evidence that he had any medical
9 follow-up. And with that, my recommendation would be
10 to postpone, decline an application based on a
11 postponement until we obtain additional medical
12 records.
13 Q Are you aware of the insurance application form?
14 A Yes.
15 Q The one that Mr. Hall filled out?
16 A Yes, I am.
17 Q And that form asked him whether or not he had been
18 diagnosed or treated for cancer, didn't it?
19 A That's correct.
20 Q And you testified earlier you have no information of
21 whether Mr. Hall really had cancer, clear or not,
22 until the time he filled out that application?
23 MR. KELLEY: Objection, misstates
24 the testimony. Go ahead, you can answer.
25 A Other than the April 30th, 1998 visit to

43

1 Dr. Charlesworth in which -- most likely in response
2 to the question, have you ever had any surgery, have
3 you ever had any conditions, Mr. Hall had to provide
4 information for -- to Dr. Charlesworth for him to
5 write, "? melanoma removed, back, 1996."
6 Q You testified earlier that you didn't know whether
7 that was Dr. Charlesworth's own supposition or
8 whether it was information provided by the patient,
9 didn't you?
10 A That is correct.
11 Q So at the time the application was made, you have no
12 information that Mr. Hall himself knew he had cancer
13 in '93?
14 MR. KELLEY: Objection, misstates
15 the testimony.
16 Q Is that correct?
17 A I had no information. But I'll remind you that I'm
18 concerned about the possibility of two dates. One is
19 a mole removed in 1993, and secondly, a notation by
20 Dr. Charlesworth that, "? melanoma removed, back,
21 1996." My concern was we're dealing with two
22 conditions at that point.
23 Q You did have one thing for certain, and that was a
24 pathology report from '93?
25 A Correct.

44

1 Q And that pathology report had a finding of dysplastic
2 nevus?
3 A That is correct.
4 Q And no finding of cancer or melanoma?
5 MR. KELLEY: Objection, asked and
6 answered several times.
7 Q Is that correct?
8 A That's correct.
9 Q So with respect to this rating chart, the tumor
10 rating chart, at the time Mr. Smith -- Mr. Hall
11 filled out the application, he would have had no
12 additional assignment of points, no points, isn't
13 that right?
14 A He would have an additional 50 points based on the
15 fact that we had no indication of follow-up. If we
16 have no indication of follow-up, we would list that
17 as an assumption that there hasn't been a follow-up.
18 Q That's follow-up for cancer, right, because the form
19 itself only asks whether you have cancer or not? And
20 if you put no, you don't have to list follow-up,
21 right?
22 A That is correct.
23 Q So based upon the application that was filled out,
24 there was no indication for further review, obtaining
25 medical records or points being assigned, isn't that

1 correct? Based upon the application --

2 A Based on the application, that's correct.

3 Q Are you aware of the policies and procedures within

4 CUNA Mutual to begin an investigation following the

5 death of an individual?

6 A It is my understanding that with the death of any

7 individual, there is a claims process that is

8 initiated.

9 Q What's your understanding of that claims process?

10 A Information is obtained, including a death

11 certificate. In this situation, let me comment, that

12 a death certificate was obtained in which it listed

13 the cause of death was malignant melanoma, and the

14 period of time that the melanoma was listed to be

15 present was, I believe, three years, which also to us

16 raised the question that the melanoma was previously

17 diagnosed and was present for three years.

18 Q Are you aware whether or not melanomas and cancers of

19 all types of forms can be present and undiagnosed?

20 A Certainly they can be undiagnosed.

21 Q Present and unobserved?

22 A That is correct.

23 Q And so that didn't give you any information about

24 whether Mr. Hall knew he had cancer three years

25 previously, did it?

1 Q What role did you play, if any, in providing

2 additional information in this litigation concerning

3 other claims that have -- where insurance policies

4 have not been issued by CUNA? Have you played any

5 role in that?

6 A Ask that again.

7 Q Sorry. We were provided by CUNA a stack of

8 information they label as claims file materials

9 regarding cases which were similar to the

10 plaintiff's. Did you play any role in providing

11 these claim files? And I'll show them to you. Or

12 selecting them.

13 A That is correct.

14 Q Correct that you did not have any role?

15 A No, I did have a role.

16 Q Oh, you did have a role. Who asked you to collect

17 those claim files or portions of them?

18 A I don't collect claim files. I'm given claim files

19 to review and then make a decision on what to do

20 based on what the particular condition is.

21 Q Well, describe for me the circumstances under which

22 you began a review process of certain claim files

23 that are in front of you.

24 A Standard procedure when I come into my office, there

25 is a box that is marked review for home mortgage

1 A Other than the comment of the April 30th, 1998 visit,

2 which preceded the policy date.

3 Q We're talking about the death certificate.

4 A The death certificate I took at its word that it was

5 melanoma that was present for a period of three

6 years.

7 Q Are you aware of some medical literature that

8 indicates that cancers in their infancy begin at the

9 time of birth?

10 A There is a possibility of congenital nevi which are

11 present in a quiescence form that can be activated

12 particularly to the sun. There is that possibility.

13 Q And the only thing insureds are required to do is

14 truthfully answer the application based on

15 information they have, isn't that true?

16 A That is correct.

17 Q Are you aware whether or not Dr. Hurley in his

18 deposition testified under oath that he had told

19 Mr. Hall that he did not have a cancer and that the

20 lesion had been completely removed?

21 MR. KELLEY: Objection. We've

22 already been over this where you asked him if he

23 was aware of those depositions, and he said he

24 was not.

25 A No, I've not seen the deposition.

1 protection. In at least one case that I see listed,

2 I was asked to render an opinion concerning a form of

3 skin cancer known as squamous cell carcinoma. And

4 based on this information received, I recommended

5 postpone for follow-up dermatologic evaluation of the

6 skin lesion in order to make and render a decision on

7 what to do with that policy.

8 Q Let me clarify, if I may, Doctor. You participated

9 in the underlying decisions of these claims and the

10 steps to take to evaluate the claims, is that right?

11 A That is correct.

12 Q Did you participate in selecting these particular

13 claims amongst a large group of claims to provide to

14 me?

15 A No, sir.

16 MR. KELLEY: Object to form of

17 the question.

18 Q I'd like to go through these -- I'll represent to you

19 that these claims were provided through counsel for

20 CUNA Mutual as claims files which were similar to the

21 plaintiff's case.

22 A Okay.

23 Q And I'm going to ask certain questions because you're

24 certainly aware of Mr. Hall's claim file.

25 A Certainly.

- 1 Q The first one is Certificate No. 31675. The insured
2 himself at the time of application, did he indicate
3 on this claim that he had a prior history of cancer?
4 A He answered yes.
5 Q And what was that prior history of cancer?
6 A It says cancer and then lists a number of physicians
7 to obtain medical records that are listed as his
8 attending physician.
9 Q Is there anything on that form that indicates there
10 was a pathology report of a dysplastic nevus but not
11 a cancer?
12 A I see no listing of this as a dysplastic nevus.
13 Q What was the basis for the denial of this either
14 application or claim for benefits?
15 A I would have no idea since, first of all, I have not
16 seen this document prior to today nor that I know
17 that this was collected. But I don't see any
18 underwriting review by me on this claim.
19 Q So you would not have participated in that evaluation
20 to your knowledge?
21 A To my knowledge, no. If this is a complete file.
22 Q But it appears that the application was denied based
23 on the insured's indication that they had prior
24 cancer?

25 MR. KELLEY: Well, I'm going to

- 1 Q What if an individual had 50 points, who would decide
2 whether that policy was accepted or declined?
3 A It may be decided by the underwriter.
4 Q It's discretionary at that point?
5 A It is discretionary.
6 Q The second one, Certificate No. 38821, did the
7 insured on this certificate indicate that they'd had
8 skin cancer previously?
9 A Yes, it does.
10 Q Any indication about a dysplastic nevus rather than
11 skin cancer?
12 A No, it refers to a squamous cell carcinoma.
13 Q Squamous cell is altogether different than this type
14 of melanoma, isn't it?
15 A That is correct.
16 Q It's a very fast, progressive cancer?
17 A It carries a significantly different risk, but a risk
18 beyond the underwriting limits that we would be able
19 to issue this policy, that is correct.
20 Q And that's a wholly different finding than dysplastic
21 nevus, isn't it?
22 A That is correct.
23 Q Let me show you Certificate No. 37470. And in this
24 the individual is listed yes with respect to having
25 prior conditions and listed basal cell as the nature

- 1 object to it. The witness testified he doesn't
2 know anything about this. You can read it as
3 well as we can.
4 A Yes, all I see is that the individual has the
5 condition cancer, that the individual was treated by
6 two physicians with the diagnosis cancer. I'll
7 remind you that this policy is either an issuance or
8 decline. There is no room for underwriting
9 evaluation that would allow a special premium or
10 rating. So either it's accepted or it's declined.
11 Based on that diagnosis, I assume the
12 underwriter made the decision to decline since the
13 individual had been seen by two doctors for the
14 diagnosis cancer in 1994 until 19 -- and then a
15 second doctor in 1996.
16 Q How many points are required to decline the policy on
17 this type of policy?
18 A Fifty to seventy-five points.
19 Q Would be a decline?
20 A Correct.
21 Q Why is there a range?
22 A You'll have to ask the underwriting department. That
23 was a range that they decided after actuarial
24 determination of what they could issue for the policy
25 and the way it is priced.

- 1 of the condition.
2 A That is correct.
3 Q And basal cell is not dysplastic nevus, is it?
4 A That is correct.
5 Q It's a wholly different thing?
6 A That is correct.
7 Q It's a form of cancer, isn't it, basal cell?
8 A Yes, it is.
9 Q And that policy was declined based upon the insured's
10 indication that he had basal cell carcinoma?
11 A That is correct. It is for removal of multiple basal
12 cell cancers, not just one basal cell cancer.
13 Q That's dissimilar to Mr. Hall's case, isn't that
14 right?
15 A That is correct.
16 Q Certificate No. 5315, here the insured listed they
17 had been previously diagnosed with cancer, a melanoma
18 cancer.
19 A Yes, that is correct.
20 Q A diagnosis of melanoma cancer is different than the
21 finding of a dysplastic nevus pathologically, isn't
22 it?
23 A If interpreted correctly, that's --
24 Q We all hope they're interpreted correctly, but as we
25 know --

1 A That is correct.
 2 Q -- they're not always done that way, right?
 3 A That's correct.
 4 Q So this finding of malignant melanoma is different
 5 than the pathology report from the '93 finding of
 6 dysplastic nevus, isn't that correct?
 7 A That's correct.
 8 Q The Certificate No. 31590, there is a condition
 9 that's disclosed by the insured of malignant
 10 melanoma, and I'll ask the same question, whether
 11 that's dysplastic nevus.
 12 A This lists melanoma. It does not list dysplastic
 13 nevus.
 14 Q The claim files that I've showed you, do any of them
 15 give any information about whether CUNA Mutual would
 16 insure someone with a finding of dysplastic nevus
 17 pathologically?
 18 A We do insure people with dysplastic nevus. We need
 19 additional information if that diagnosis is made that
 20 pertains to family history, family history of either
 21 dysplastic nevi or melanoma and that there is
 22 documentation of appropriate follow-up for the
 23 condition once the diagnosis is made.
 24 Q Is there any place on the application form where the
 25 insured is required to indicate a finding of

1 outside his area. You're requiring him now to
 2 comment on a deposition that he's not aware --
 3 that he wasn't aware of until today and hasn't
 4 read, and I don't think it's an appropriate
 5 question. Go ahead.
 6 Q A finding by a micropathologist that there were not
 7 abnormal cells invading the dermis, would that be
 8 more consistent with a benign or a malignant process?
 9 A I can't answer that.
 10 Q A finding by the pathologist that there were no
 11 abnormal melanocytic --
 12 A Melanocytes.
 13 Q Melanocytes, that there were no abnormal melanocytes,
 14 is that consistent or inconsistent with a malignant
 15 process?
 16 A If the pathologist is correct, that's my
 17 understanding.
 18 Q That that's consistent with a benign process?
 19 A Correct.
 20 Q Do I take it from your answers that you would defer
 21 to the pathologist actually looking at the slides
 22 rather than speculating yourself about the
 23 microscopic findings?
 24 A That is correct. Unless I had a history of a rapidly
 25 growing lesion in which I would request review of

1 dysplastic nevus?
 2 A No, there is not.
 3 Q Is there any place on the form to indicate the
 4 removal of a mole where the mole at least as reported
 5 by the physician to the patient is nonmalignant?
 6 A State that again.
 7 Q Is there any place on the application form to tell
 8 simply whether you had a mole removed that is
 9 noncancerous?
 10 A No, there is not.
 11 Q No requirement for the insured to indicate a
 12 dysplastic nevus or a mole?
 13 A No, there is not.
 14 Q Would you agree or disagree -- in fairness, I'm
 15 taking some statements from Dr. Ramirez's deposition,
 16 the micro --
 17 A That's the pathologist?
 18 Q Right, who did the microscopic look. And I
 19 understand you're not a pathologist, and if this is
 20 outside your area, just let me know.
 21 MR. KELLEY: Let me interpose an
 22 objection that it's outside --
 23 MR. PEDERSEN: This is outside
 24 his area?
 25 MR. KELLEY: Yeah, obviously it's

1 that information.
 2 Q In your own practice is it a routine for you to
 3 obtain a pathology report and give a copy of that
 4 pathology report to the patient or read it to him?
 5 A I would usually not provide them with a copy of the
 6 report nor read it to them, but in this circumstance
 7 I would make sure that they understood their
 8 responsibility to follow up on such a condition
 9 because of the possibility of other lesions which may
 10 or may not have malignant potential.
 11 Q Do you have any understanding as to the progression
 12 or histology of a removal of a mole on the shoulder
 13 or neck and the development of a lump in the neck?
 14 A I would need to know exactly where the lesion was
 15 because the location or the possible lymphatic spread
 16 from that can take a course that either goes directly
 17 to the area involved or the lesion may have
 18 metastasized to an area where it would then drain to
 19 that site.
 20 Q And in this -- I'm sorry.
 21 A My understanding of the mole -- of the node that was
 22 removed in January of 1999 is that this is considered
 23 a "sentinel" node and represented not a primary tumor
 24 but a metastasis from a different site.
 25 MR. PEDERSEN: I don't have any

1 other questions of Dr. Ansfield.

2 MR. KELLEY: I may have a few
3 questions.

4 EXAMINATION

5 BY MR. KELLEY:

6 Q Doctor, just let me show you, and I'll show you in my
7 file here just because it's easier with these records
8 that you have, and many of them we've already talked
9 about briefly, but let me show you the record from
10 Dr. Chicklo dated January 22 of 1999, and this is a
11 record that refers to Tommy Hall, correct?

12 A That is correct.

13 Q All right. Now, I'll preface this by saying that all
14 of these documents that I'm going to go over are
15 documents that were provided to me as CUNA's counsel
16 as part of the claims file, part of the investigation
17 that was done on this, but I want to ask you
18 specifically is this one of the documents then that
19 you had reviewed prior to helping CUNA decide what
20 action to take on this claim investigation?

21 A Yes, it is.

22 Q Okay. And in this document it relates a personal
23 history, do you see that?

24 A I do see that.

25 Q And it mentions that part of the personal history is

1 that he had a malignant mole excised in 1993 in his
2 back?

3 A That is correct.

4 Q And in your experience as a physician, when a
5 personal history is referenced in a document, where
6 typically does that personal history come from?

7 A It comes from the patient.

8 Q I want to jump ahead then to the March 15, 1999, a
9 colonoscopy report from Dr. Enders, E-N-D-E-R-S. And
10 is there also a reference in there as to a history of
11 having -- it says a melena. I presume that's a
12 misspelling -- a melanoma removed in 1993?

13 A That is correct.

14 Q Was that part of the records that you had reviewed?

15 A It is. It also states that in February he had a
16 cervical node that had malignant melanoma.

17 Q Jumping ahead to a letter from Dr. Michael Cashdollar
18 dated February 17, 1999 --

19 (Discussion off the record)

20 Q Referring to this February 17, 1999 letter from
21 Dr. Cashdollar, does he relate in that letter to
22 Dr. Chicklo, and that's C-H-I-C-K-L-O, any of the
23 history that Mr. Hall presented with?

24 A Yes, he does.

25 Q Does it say anything in there about a melanoma or

1 malignant mole?

2 A Yes, it states that he had a malignant melanoma
3 removed and that the -- correction, Mr. Hall
4 demonstrated a left in-scapular dermal lesion in
5 1993. Pathology revealed a malignant melanoma.

6 Q So that's indicating that there was a pathologic
7 report of some kind that indicated that?

8 A That's correct.

9 Q And that --

10 A And additionally it states past medical history is
11 most notable for malignant melanoma. Cervical
12 resection 1993.

13 Q And this was a document that you had as part of your
14 evaluation?

15 A That's correct.

16 Q And jumping to a -- appears to be a February 23, 1999
17 note on Dr. Enders' letterhead, does it refer to a
18 history in that particular document as well?

19 A It does. It refers to a malignant -- correction -- a
20 melanoma in 1993. Now it says no, n-o, but I presume
21 that is now with cervical lymph node showing
22 recurrent melanoma.

23 Q And also let me show you an oncology outpatient note
24 dated July 15 of 1999 by a Dr. William Sharfman.
25 Does that indicate any history about a melanoma or

1 malignancy?

2 A Yes, it does. It states that Mr. Hall was in his
3 usual state of health until 1996 when a number of
4 small moles were removed from his left back. They
5 were being irritated by his shirt. In 1993 a mole
6 developed on his left shoulder blade. It developed a
7 bright red rim around it. Excised pathology showed a
8 malignant melanoma.

9 Q And this is in the history of present illness section
10 of this report?

11 A That is correct.

12 Q And this is what appears to be a report of a new
13 patient clinic visit report is what the title is of
14 that document, is that correct?

15 A That is correct.

16 Q So what would that indicate to you about the source
17 of the information for that history?

18 A The source of the information would be the patient,
19 Mr. Hall.

20 Q Now, all of these records, including the records from
21 Dr. Chicklo, Dr. Cashdollar, Dr. Enders, Dr. Sharfman
22 all indicating a past history and even in two of them
23 indicating that there was a pathology which showed a
24 past history of a malignant melanoma or a malignant
25 mole, all that information was available to you when

61

1 you participated in the decision with regard to
2 Mr. Hall's claim?
3 A Yes, it was.
4 MR. KELLEY: That's all I have.
5 Thanks.
6 REEXAMINATION
7 BY MR. PEDERSEN:
8 Q All of the references to medical records to which
9 you've just been shown, they began on January 22nd,
10 '99 and ran through July 15th of '99, is that
11 correct?
12 A That's correct.
13 Q All of those references are after the application for
14 insurance was made in November of '98?
15 A Correct.
16 Q And after a certificate was issued by the insurance
17 company?
18 A That's correct.
19 Q The pathology report --
20 A Can we just go off the record?
21 (Discussion off the record)
22 A Yes, those records are referred to, medical records
23 that occurred after the policy effective date, which
24 I believe was January 11th, 1999.
25 Q And you don't know when over any of this course of

63

1 benefits was made, of course before he died because
2 you had the death certificate. He was deposed during
3 his lifetime, before the death certificate, before
4 the claim for benefits came out. He was deposed
5 during that period of time.
6 A Normally I --
7 MR. KELLEY: Well, just let me
8 interpose another objection. I'm going to
9 object to you asking him a question about
10 whether he would have wanted to know about a
11 deposition that no one ever told him about, that
12 he had no knowledge had ever occurred and I
13 might add that Mr. --
14 MR. PEDERSEN: Okay.
15 MR. KELLEY: -- Mr. and
16 Mrs. Hall's lawyers never supplied that
17 information, the copies of the deposition
18 transcripts or even any of the information that
19 was contained in those deposition transcripts
20 until they were provided to me as their counsel
21 a couple of weeks ago. Go ahead.
22 Q Did you ever speak to Mrs. Hall about what she and
23 her husband knew of concerning that '93 mole?
24 A No, I did not.
25 Q Did you have any understanding at any time, including

62

1 time Mr. Hall found out that he had malignant
2 melanoma?
3 A I can't say for certain, but he is providing his
4 physicians during this time frame with -- apparently
5 with a history that he had a malignant melanoma.
6 Q During the time frame from January 22nd, '99 through
7 July 15th, '99?
8 A That's what the records suggest.
9 Q All after the application date?
10 A Correct.
11 Q And the certificate being issued?
12 A Correct.
13 Q Are you aware that Mr. Hall was deposed both by
14 transcript and videotape before he died?
15 A No, I was not.
16 Q As a physician reviewing his records, wouldn't you
17 want to know if Mr. Hall provided any information as
18 to his knowledge from the time period '93 through
19 '98?
20 MR. KELLEY: Objection,
21 objection. Now we're talking about a deposition
22 that was taken well after this review was done.
23 And I think that's unfair not to tell him the
24 dates when this was done.
25 Q The deposition took place after -- before a claim for

64

1 up until today, that a lawsuit was filed against
2 Dr. Hurley, Dr. Baker and the hospital with respect
3 to that mole?
4 A No, I did not know anything with the exception of
5 last night I was informed that there was a
6 malpractice claim, but I did not know to whom that
7 was directed.
8 Q Are you aware as you sit here today that the mole --
9 that resections from the mole were sent -- from the
10 '93 mole were sent to NIH and they produced a
11 pathology report?
12 A That information was provided to me by counsel last
13 night.
14 Q The pathology report that's being referred to in the
15 '99 time frame, you don't know whether that was the
16 '93 pathology report, the NIH pathology report or the
17 January pathology report '99, do you?
18 A No.
19 MR. KELLEY: Well, Steve, if
20 we're going to do that, okay, because the
21 pathology report is August of '99 and you
22 know that --
23 MR. PEDERSEN: Actually I don't
24 remember the date.
25 MR. KELLEY: Now you're asking

65

1 him questions about that he doesn't know that --
 2 you know, when this occurred and whether it
 3 occurred before July and all of that. That
 4 pathology report, so that we're clear on this
 5 record, that you provided to me occurred in
 6 August of 1999.

7 MR. PEDERSEN: Which one, the
 8 NIH?

9 MR. KELLEY: Yes, which is after
 10 all of these documents that we've just referred
 11 to.

12 Q There was another pathology report done in either
 13 January or February of '99, wasn't there?

14 A There was a biopsy of the lymph node lesion that was
 15 removed, that's correct.

16 Q And you don't know what of the various pathology
 17 reports is being referred to when they talk about a
 18 pathology report in '99, do you?

19 A Since references are made to a pathology report in
 20 the records that I had reviewed, they were -- would
 21 have to be the pathology report from the January 1999
 22 resection because if indeed the date of the pathology
 23 report from the NIH was in August of '99, the records
 24 that I reviewed preceded that date. They were in --
 25 between January and I think June or July of 1999 by

66

1 the physicians whose records I reviewed.

2 Q You were conducting your review in December of '99,
 3 weren't you?

4 A That is correct.

5 MR. PEDERSEN: I don't have any
 6 other questions.

7 MR. KELLEY: You know, I just
 8 want to -- I want to clear this up too.

9 REEXAMINATION

10 BY MR. KELLEY:

11 Q Doctor, again let me show you -- this is February of
 12 1999. The note from Dr. Cashdollar, Dr. Chicklo, it
 13 says in here, as you are well aware in the second
 14 sentence, "Mr. Hall demonstrated a left in-scapular
 15 dermal lesion in 1993. Pathology revealed a
 16 malignant melanoma."

17 Would you agree with me that that language,
 18 pathology revealed a malignant melanoma, is referring
 19 to the lesion that was removed in 1993?

20 A Yes, I do.

21 Q And that's what the record says, correct?

22 A Yep.

23 MR. PEDERSEN: Now, you looked,
 24 however --

25 MR. KELLEY: Wait a minute, wait

67

1 a minute, wait a minute.

2 MR. PEDERSEN: I'm sorry, I'm
 3 sorry.

4 Q Again just to clear this up, this is Dr. Sharfman's
 5 note of July 15 of 1999. If you would review this
 6 section here again and --

7 A This information again states that the "pathology
 8 showed a malignant melanoma." And that refers to the
 9 1993 mole that was removed.

10 MR. KELLEY: Thank you. Go
 11 ahead.

12 REEXAMINATION

13 BY MR. PEDERSEN:

14 Q You've read from two medical records, one in February
 15 of '99 and one in July of '99 that refer to pathology
 16 from the '93 mole, is that correct?

17 A That's correct.

18 Q You, however, have the '93 pathology report yourself,
 19 right?

20 A That is correct.

21 Q You had it in your file at the time the evaluation
 22 was made?

23 A Yes.

24 Q And does that pathology report indicate anywhere on
 25 it malignant melanoma?

68

1 A It does not. But I must remind you that there are
 2 medical records that we requested both from
 3 Dr. Hurley and from Dr. Baker requesting information,
 4 and we were told that there were no records
 5 available. So I had no idea whether or not there had
 6 been a review, a re-review of that slide made
 7 somewhere in the past.

8 Q Let me clarify. So what you're saying, in February
 9 of '99 and July of '99 you don't know whether those
 10 doctors are commenting about the pathology report or
 11 a re-review of the slides or a new resection?

12 A That's correct.

13 Q The information then described in February of '99 and
 14 July of '99, they don't tell us anything about what
 15 Mr. Hall knew at the time he filled out his
 16 application about whether he had cancer, do they?

17 MR. KELLEY: Objection.

18 A Let me make this comment about all of these reports.
 19 This is listed in a history of the present illness.
 20 That is normally information obtained from the
 21 patient. And it's also very clear that these
 22 documents state unequivocally that, quote -- as an
 23 example, quote, the July 15th, 1999 note from
 24 Dr. Sharfman that it states unequivocally, "Pathology
 25 showed a malignant melanoma."

1 I must as a physician go with that information
 2 as being reliable, supported by what the pathology
 3 report showed.
 4 Q But you had the pathology report, right?
 5 MR. KELLEY: Objection, asked and
 6 answered.
 7 MR. PEDERSEN: Okay. Let me go
 8 on. Let me go on.
 9 Q Both of these records in February of '99 and July of
 10 '99, they indicate in the history section information
 11 from a pathology report or a reread or resection,
 12 something about pathology, right?
 13 A That's correct.
 14 Q There's no indication that that's from the patient,
 15 is there, that the patient is telling what was on his
 16 pathology report?
 17 A The information related to it. The actual pathology
 18 report would be information obtained from medical
 19 records.
 20 Q Not from the patient?
 21 A But the other information that he had a malignant
 22 mole removed, which was stated -- or a malignant
 23 melanoma, which was stated several times, I would
 24 assume was information that was obtained from the
 25 patient himself. Since I can't direct that

1 STATE OF WISCONSIN }
 2 COUNTY OF DANE } ss
 3 I, LISA A. CREERON, a Notary Public in and for
 4 the State of Wisconsin, do hereby certify that the
 5 above deposition was taken before me on the 1st
 6 day of November, 2001, commencing at 9:00 a.m., at
 7 Melli, Walker, Pease & Ruhly, 10 East Doty Street, in
 8 the City of Madison, in said County and State, that it
 9 was taken at the request of the plaintiff, upon verbal
 10 interrogatories, that it was taken in shorthand by me, a
 11 competent court reporter and disinterested person,
 12 approved by all parties in interest, and thereafter
 13 reduced to typewriting by me; that the said deposition is
 14 a true record of the deponent's testimony; that the said
 15 deposition is to be used in the above-entitled action now
 16 pending in Federal Court; that the deposition was taken
 17 pursuant to notice; that the said THOMAS J. ANSFIELD,
 18 before examination, was sworn by me to testify the truth,
 19 the whole truth, and nothing but the truth relative to
 20 said cause. Dated at Madison, Wisconsin, this 5th day of
 21 November, 2001.

22
 23 NOTARY PUBLIC, STATE OF WISCONSIN
 24 REGISTERED PROFESSIONAL REPORTER
 25

1 information to these -- ask that question directly to
 2 the physician, I would presume the records speak for
 3 themselves.
 4 Q And all of those references that you're referring to,
 5 including these last two, are references after the
 6 application and after the certificate was issued?
 7 A That's correct.
 8 MR. PEDERSEN: I don't have any
 9 other questions.
 10 MR. KELLEY: Good, we're done.
 11 (10:55 a.m.)
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THOMAS ANSFIELD - 11/01/01 / HALL V. CUMMINGS MUTUAL

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| <p>&</p> <p>& 2:10,18 71:7</p> <p>,</p> <p>'93 13:2 16:17 20:15 21:24 25:21 26:4 28:1,22 32:9 40:21,22 42:4 43:13,24 53:5 62:18 63:23 64:10, 16 67:16,18</p> <p>'96 17:7,19,21 27:23</p> <p>'98 19:22 40:22 41:20 61:14 62:19</p> <p>'99 41:20 61:10,10 62:6,7 64:15, 17,21 65:13,18,23 66:2 67:15,15 68:9,9,13,14 69:9,10</p> <p>*</p> <p>* 3:7,7,7,7</p> | <p>9</p> <p>9:00 2:13 71:6</p> <p>9th 15:3</p> <p>A</p> <p>a.m 2:13 70:11 71:6</p> <p>able 11:19 51:18</p> <p>abnormal 9:25 55:7,11,13</p> <p>about 9:7 12:9 18:10 19:10 25:13, 21 27:22,25 28:7 30:20,24,25 31: 18 32:10,13 39:12 43:18 45:23 46: 3 50:2 51:10 53:15 55:22 57:9 58: 25 59:25 60:16 62:21 63:9,10,11, 22 65:1,17 68:10,14,16,18 69:12</p> <p>above 4:10 71:5</p> <p>above-entitled 2:2 71:15</p> <p>accept 34:2 35:8 37:23</p> <p>accepted 30:22 50:10 51:2</p> <p>accurate 17:8</p> <p>accurately 31:22</p> <p>action 35:18 36:1,4,10 57:20 71: 15</p> <p>activated 46:11</p> <p>active 35:21</p> <p>actual 31:9 69:17</p> <p>actually 55:21 64:23</p> <p>actuarial 50:23</p> <p>add 34:19 35:6 41:25 63:13</p> <p>added 36:6 41:7,9</p> <p>addition 37:19</p> <p>additional 10:6 11:1 12:6 13:23 21:15 26:24 27:2,22 28:15 33:24 34:19 35:1,6 38:1,16,22 39:23,25 41:6,9 42:1,4,11 44:12,14 47:2 53: 19</p> <p>additionally 59:10</p> <p>address 20:1 25:12</p> <p>addresses 23:16</p> <p>Advice 27:9,10,10</p> <p>after 18:25,25 23:16 27:4 29:8 34: 4,9 35:13 36:3,7 37:14,14 41:22 50:23 61:13,16,23 62:9,22,25 65:9 70:5,6</p> <p>Again 12:12 14:12 16:16 18:7 41: 14 42:8 47:6 54:6 66:11 67:4,6,7</p> <p>against 64:1</p> <p>ago 13:14 63:21</p> <p>agree 12:20 24:6 54:14 66:17</p> <p>ahead 9:9 10:24 13:7 35:23 42:24 55:5 58:8,17 63:21 67:11</p> <p>al 2:4</p> <p>allow 50:9</p> <p>already 19:1 32:12 46:22 57:8</p> <p>although 25:10</p> <p>altogether 51:13</p> <p>always 53:2</p> <p>amongst 48:13</p> <p>amount 38:22,23</p> <p>another 11:18 14:19 26:21 33:19 63:8 65:12</p> <p>ANSFIELD 2:1 4:8,15,17 57:1 71: 17</p> <p>answer 9:8 10:24 12:22 13:12 18: 14 21:7 36:7 42:24 46:14 55:9</p> <p>answered 23:13 29:22 31:19 44:6 49:4 69:6</p> <p>answers 40:17 55:20</p> <p>antenna 14:19</p> <p>anything 15:19 16:16 17:8 27:23 30:25 31:18 32:13 49:9 50:2 58:25 64:4 68:14</p> <p>anywhere 39:19 67:24</p> <p>Apart 26:1</p> <p>apparently 62:4</p> <p>appear 25:9</p> <p>appearing 2:16,19</p> <p>appears 19:16 49:22 59:16 60:12</p> <p>applicant 23:22 38:15,20</p> <p>application 19:1,10,19 23:23,25 24:8 25:14 28:25 29:2,4,4 30:19, 22 31:7,8 32:6 34:25 37:24 25 39: 9 40:4,11 41:23 42:10,13,22 43:11 44:11,23 45:1,2 46:14 49:2 44,22 53:24 54:7 61:13 62:9 68:16 70:6</p> <p>applied 38:21</p> <p>applying 35:9</p> <p>appropriate 34:21 35:3 39:17,20 53:22 55:4</p> <p>appropriately 10:15 11:5</p> <p>approved 71:12</p> <p>approximately 9:18</p> | <p>April 17:1,12,19,23 27:17 28:1,22 37:19 40:7,22 42:25 46:1</p> <p>area 11:4 14:5 54:20,24 55:1 56: 17,18</p> <p>areas 11:18,21</p> <p>aren't 12:25</p> <p>around 60:7</p> <p>arrange 11:2</p> <p>ask 15:25 16:16 31:18 47:6 48:23 50:22 53:10 57:17 70:1</p> <p>asked 29:4 36:3,5 42:17 44:5 46: 22 47:16 48:2 69:5</p> <p>asking 32:17 63:9 64:25</p> <p>asks 44:19</p> <p>assigned 44:25</p> <p>assignment 44:12</p> <p>assisted 18:10</p> <p>Associated 4:20</p> <p>assume 50:11 69:24</p> <p>assumption 44:17</p> <p>Attached 36:16 38:2</p> <p>attempt 26:2,7</p> <p>attempted 28:7</p> <p>attending 39:24 40:14 49:8</p> <p>Attorney 3:3,4 26:8,9,20,22 28:11, 16</p> <p>Attorneys 2:10,18</p> <p>August 32:22 35:11,25 36:12 64: 21 65:6,23</p> <p>author 32:22</p> <p>authorization 21:12 22:15,18,20, 22,23 23:10,21 24:7,14,21</p> <p>authorizations 23:1</p> <p>available 11:3 20:17 25:25 37:3 38:3 39:8 40:16 41:4,15 60:25 68: 5</p> <p>average 8:4,7,9</p> <p>aware 9:21 20:10,14,17,20 30:4,6 42:13 45:3,18 46:7,17,23 48:24 55:2,3 62:13 64:8 66:13</p> | <p>C</p> <p>C-H-I-C-K-L-O 58:22</p> <p>call 24:23 25:5,20 26:13,15 38:22</p> <p>called 4:9 22:14</p> <p>caller 26:12</p> <p>calls 10:23 12:17 23:3</p> <p>came 63:4</p> <p>Camp 2:16</p> <p>Can 7:13 9:8 10:7,24 13:12 14:16 15:12 18:13 21:7 24:1 33:8,25 34: 2 37:22 40:8 42:24 45:19,20 46:11 50:2,3 56:16 61:20</p> <p>can't 18:9 21:10 36:7 55:9 62:3 69:25</p> <p>cancer 10:4,10,22 11:25 12:4 14:9 15:20 16:10,19 19:12,22 20:3 21:4 29:7 35:5 39:4,4,6,7 41:13,18,18 42:18,21 43:12 44:4,18,19 45:24 46:19 48:3 49:3,5,6,11,24 50:5,6, 14 51:8,11,16 52:7,12,17,18,20 68: 16</p> <p>cancerous 26:3 29:1</p> <p>cancers 45:18 46:8 52:12</p> <p>cannot 11:21 18:2 26:18,23</p> <p>carcinoma 48:3 51:12 52:10</p> <p>cardiologist 4:19,21</p> <p>cardiology 4:24</p> <p>care 9:8,13 34:17,21,21 35:4</p> <p>caring 21:19</p> <p>carries 51:17</p> <p>carry 10:5</p> <p>case 13:20 14:1,1,14 15:7 20:8 25:24 33:14 34:6 35:21 48:1,21 52:13</p> <p>cases 47:9</p> <p>Cashdollar 58:17,21 60:21 66:12</p> <p>cause 4:10 10:17 45:13 71:20</p> <p>cell 48:3 51:12,13,25 52:3,7,10,12, 12</p> <p>cells 9:25 12:10 13:9,11,14,15,18 14:9 37:17 55:7</p> <p>certain 33:11,12 37:2 43:23 47:22 48:23 62:3</p> <p>Certainly 12:24,25 32:2 41:24 45: 20 48:24,25</p> <p>certificate 30:22 45:11,12 46:3,4 49:1 51:6,7,23 52:16 53:8 61:16 62:11 63:2,3 70:6</p> <p>certify 71:4</p> <p>cervical 58:16 59:11,21</p> <p>Chambersburg 14:24 16:3,4</p> <p>changed 13:22</p> <p>changes 11:11 37:18</p> <p>character 13:22</p> <p>characterizing 31:17</p> <p>charge 7:10</p> <p>Charlesworth 16:23 17:4 21:18 24:17 27:18 40:3,6,22 43:1,4,20</p> <p>Charlesworth's 18:16 19:4 43:7</p> <p>chart 39:19 44:9,10</p> <p>Chicklo 18:19 57:10 58:22 60:21 66:12</p> <p>Chicklo's 18:21</p> <p>choice 33:10</p> <p>circumstance 56:6</p> <p>circumstances 47:21</p> <p>City 2:11 8:16 71:8</p> <p>claim 15:7 16:1 21:14 32:23 37:4 47:11,17,18,18,22 48:24 49:3,14, 18 53:14 57:20 61:2 62:25 63:4 64:6</p> <p>claims 6:9,10,16,25 7:8,17,19 15: 5 22:23 25:23 32:1 45:7,9 47:3,8 48:9,10,13,13,19,20 57:16</p> <p>clarify 48:8 68:8</p> <p>clear 42:21 65:4 66:8 67:4 68:21</p> <p>clinic 60:13</p> <p>clinical 5:12</p> <p>collect 47:16,18</p> <p>collected 49:17</p> <p>colonoscopy 58:9</p> <p>come 47:24 58:6</p> <p>comes 58:7</p> <p>commencing 2:12 71:6</p> <p>comment 45:11 46:1 55:2 68:18</p> <p>commenting 68:10</p> <p>comments 29:2</p> <p>Companies 5:21 36:23</p> <p>company 27:11 33:22 36:22 61:17</p> <p>company's 38:5</p> <p>competent 71:11</p> <p>complete 49:21</p> |
| <p>1</p> <p>1 3:6 5:4,5,19</p> <p>10 2:10 9:18 71:7</p> <p>10:55 70:11</p> <p>10th 30:4 32:9</p> <p>11th 18:17 19:4,8,18 61:24</p> <p>12-month 11:10</p> <p>13th 16:7</p> <p>15 58:8 59:24 67:5</p> <p>15th 61:10 62:7 68:23</p> <p>17 58:18,20</p> <p>17108 2:19</p> <p>18th 19:19,22 20:3 38:25</p> <p>19 50:14</p> <p>1967 8:2</p> <p>1970 8:2</p> <p>1989 25:8 34:9</p> <p>1993 5:19 14:23 15:8,21 16:7 17: 12 18:22 21:20 27:17 29:11 30:2, 19 33:18 37:15 41:2 43:19 58:1,12 59:5,12,20 60:5 66:15,19 67:9</p> <p>1994 50:14</p> <p>1996 17:18 27:20 33:19 37:20 43: 21 50:15 60:3</p> <p>1998 6:22 17:1,19,23 18:17 19:4, 8,18,19 20:3 37:19 38:25 39:8,11 40:7 42:25 46:1</p> <p>1999 15:3,6 18:20,24 21:13 37:4 41:15 56:22 57:10 58:8,18,20 59: 16,24 61:24 65:6,21,25 66:12 67:5 68:23</p> <p>1st 2:12 71:5</p> | <p>2</p> <p>2-1-2000 26:21</p> <p>200 8:7</p> <p>2000 25:6 26:15 30:4 31:6 35:25 41:16,20</p> <p>2001 2:12 32:22 35:11,25 36:12 71:6,21</p> <p>22 57:10</p> <p>22nd 18:20,24 61:9 62:6</p> <p>23 59:16</p> <p>24th 32:22 35:11 36:12</p> <p>25-year 5:21</p> | <p>B</p> <p>back 11:20,22 15:15 17:9 18:22 19:3 26:14 29:19,24 30:24,25 31: 9,18 36:13 37:16,20 58:2 60:4</p> <p>background 5:7</p> <p>backwards 5:8</p> <p>Baker 16:14,15 25:4,6,7 29:16,17 34:7,8 64:2 68:3</p> <p>Baker's 25:6</p> <p>ball 5:24</p> <p>Barb 26:12,22</p> <p>basal 51:25 52:3,7,10,11,12</p> <p>based 8:18 22:19 28:22 29:24 30: 16 35:19 42:10 44:14,23 45:1,2 46:14 47:20 48:4 49:22 50:11 52:9</p> <p>basis 7:18 11:11 39:15 41:25 49: 13</p> <p>because 11:19 12:3,18 13:21 27: 11 35:6 44:18 48:23 56:9,15 57:7 63:1 64:20 65:22</p> <p>before 2:7 19:18 38:4 62:14,25 63:1,3,3 65:3 71:5,18</p> <p>began 47:22 61:9</p> <p>begin 45:4 46:8</p> <p>behalf 2:16</p> <p>believe 12:25 22:21 26:12 38:3 40:25 45:15 61:24</p> <p>benefits 18:11 25:14 28:19 30:6, 13 31:10,23 38:5 49:14 63:1,4</p> <p>benign 10:2 55:8,18</p> <p>besides 6:14 17:19 32:12</p> <p>best 13:12</p> <p>between 40:21 65:25</p> <p>beyond 51:18</p> <p>biopsy 16:2 65:14</p> <p>birth 46:9</p> <p>bit 15:24</p> <p>blade 60:6</p> <p>body 11:20</p> <p>borders 14:16</p> <p>both 10:13 13:3 62:13 68:2 69:9</p> <p>bottom 23:20</p> <p>box 47:25</p> <p>Brenda 7:21 32:25 33:1 35:23 36: 5,18</p> <p>briefly 5:6 57:9</p> <p>bright 60:7</p> <p>broad 36:24</p> <p>business 6:3 7:2</p> | <p>C</p> <p>C-H-I-C-K-L-O 58:22</p> <p>call 24:23 25:5,20 26:13,15 38:22</p> <p>called 4:9 22:14</p> <p>caller 26:12</p> <p>calls 10:23 12:17 23:3</p> <p>came 63:4</p> <p>Camp 2:16</p> <p>Can 7:13 9:8 10:7,24 13:12 14:16 15:12 18:13 21:7 24:1 33:8,25 34: 2 37:22 40:8 42:24 45:19,20 46:11 50:2,3 56:16 61:20</p> <p>can't 18:9 21:10 36:7 55:9 62:3 69:25</p> <p>cancer 10:4,10,22 11:25 12:4 14:9 15:20 16:10,19 19:12,22 20:3 21:4 29:7 35:5 39:4,4,6,7 41:13,18,18 42:18,21 43:12 44:4,18,19 45:24 46:19 48:3 49:3,5,6,11,24 50:5,6, 14 51:8,11,16 52:7,12,17,18,20 68: 16</p> <p>cancerous 26:3 29:1</p> <p>cancers 45:18 46:8 52:12</p> <p>cannot 11:21 18:2 26:18,23</p> <p>carcinoma 48:3 51:12 52:10</p> <p>cardiologist 4:19,21</p> <p>cardiology 4:24</p> <p>care 9:8,13 34:17,21,21 35:4</p> <p>caring 21:19</p> <p>carries 51:17</p> <p>carry 10:5</p> <p>case 13:20 14:1,1,14 15:7 20:8 25:24 33:14 34:6 35:21 48:1,21 52:13</p> <p>cases 47:9</p> <p>Cashdollar 58:17,21 60:21 66:12</p> <p>cause 4:10 10:17 45:13 71:20</p> <p>cell 48:3 51:12,13,25 52:3,7,10,12, 12</p> <p>cells 9:25 12:10 13:9,11,14,15,18 14:9 37:17 55:7</p> <p>certain 33:11,12 37:2 43:23 47:22 48:23 62:3</p> <p>Certainly 12:24,25 32:2 41:24 45: 20 48:24,25</p> <p>certificate 30:22 45:11,12 46:3,4 49:1 51:6,7,23 52:16 53:8 61:16 62:11 63:2,3 70:6</p> <p>certify 71:4</p> <p>cervical 58:16 59:11,21</p> <p>Chambersburg 14:24 16:3,4</p> <p>changed 13:22</p> <p>changes 11:11 37:18</p> <p>character 13:22</p> <p>characterizing 31:17</p> <p>charge 7:10</p> <p>Charlesworth 16:23 17:4 21:18 24:17 27:18 40:3,6,22 43:1,4,20</p> <p>Charlesworth's 18:16 19:4 43:7</p> <p>chart 39:19 44:9,10</p> <p>Chicklo 18:19 57:10 58:22 60:21 66:12</p> <p>Chicklo's 18:21</p> <p>choice 33:10</p> <p>circumstance 56:6</p> <p>circumstances 47:21</p> <p>City 2:11 8:16 71:8</p> <p>claim 15:7 16:1 21:14 32:23 37:4 47:11,17,18,18,22 48:24 49:3,14, 18 53:14 57:20 61:2 62:25 63:4 64:6</p> <p>claims 6:9,10,16,25 7:8,17,19 15: 5 22:23 25:23 32:1 45:7,9 47:3,8 48:9,10,13,13,19,20 57:16</p> <p>clarify 48:8 68:8</p> <p>clear 42:21 65:4 66:8 67:4 68:21</p> <p>clinic 60:13</p> <p>clinical 5:12</p> <p>collect 47:16,18</p> <p>collected 49:17</p> <p>colonoscopy 58:9</p> <p>come 47:24 58:6</p> <p>comes 58:7</p> <p>commencing 2:12 71:6</p> <p>comment 45:11 46:1 55:2 68:18</p> <p>commenting 68:10</p> <p>comments 29:2</p> <p>Companies 5:21 36:23</p> <p>company 27:11 33:22 36:22 61:17</p> <p>company's 38:5</p> <p>competent 71:11</p> <p>complete 49:21</p> |
| <p>3</p> <p>30 24:1,7,11</p> <p>30th 17:1,19,23 42:25 46:1</p> <p>31590 53:8</p> <p>31675 49:1</p> <p>31st 26:15</p> <p>37470 51:23</p> <p>38821 51:6</p> | <p>3</p> <p>30 24:1,7,11</p> <p>30th 17:1,19,23 42:25 46:1</p> <p>31590 53:8</p> <p>31675 49:1</p> <p>31st 26:15</p> <p>37470 51:23</p> <p>38821 51:6</p> | <p>B</p> <p>back 11:20,22 15:15 17:9 18:22 19:3 26:14 29:19,24 30:24,25 31: 9,18 36:13 37:16,20 58:2 60:4</p> <p>background 5:7</p> <p>backwards 5:8</p> <p>Baker 16:14,15 25:4,6,7 29:16,17 34:7,8 64:2 68:3</p> <p>Baker's 25:6</p> <p>ball 5:24</p> <p>Barb 26:12,22</p> <p>basal 51:25 52:3,7,10,11,12</p> <p>based 8:18 22:19 28:22 29:24 30: 16 35:19 42:10 44:14,23 45:1,2 46:14 47:20 48:4 49:22 50:11 52:9</p> <p>basis 7:18 11:11 39:15 41:25 49: 13</p> <p>because 11:19 12:3,18 13:21 27: 11 35:6 44:18 48:23 56:9,15 57:7 63:1 64:20 65:22</p> <p>before 2:7 19:18 38:4 62:14,25 63:1,3,3 65:3 71:5,18</p> <p>began 47:22 61:9</p> <p>begin 45:4 46:8</p> <p>behalf 2:16</p> <p>believe 12:25 22:21 26:12 38:3 40:25 45:15 61:24</p> <p>benefits 18:11 25:14 28:19 30:6, 13 31:10,23 38:5 49:14 63:1,4</p> <p>benign 10:2 55:8,18</p> <p>besides 6:14 17:19 32:12</p> <p>best 13:12</p> <p>between 40:21 65:25</p> <p>beyond 51:18</p> <p>biopsy 16:2 65:14</p> <p>birth 46:9</p> <p>bit 15:24</p> <p>blade 60:6</p> <p>body 11:20</p> <p>borders 14:16</p> <p>both 10:13 13:3 62:13 68:2 69:9</p> <p>bottom 23:20</p> <p>box 47:25</p> <p>Brenda 7:21 32:25 33:1 35:23 36: 5,18</p> <p>briefly 5:6 57:9</p> <p>bright 60:7</p> <p>broad 36:24</p> <p>business 6:3 7:2</p> | <p>C</p> <p>C-H-I-C-K-L-O 58:22</p> <p>call 24:23 25:5,20 26:13,15 38:22</p> <p>called 4:9 22:14</p> <p>caller 26:12</p> <p>calls 10:23 12:17 23:3</p> <p>came 63:4</p> <p>Camp 2:16</p> <p>Can 7:13 9:8 10:7,24 13:12 14:16 15:12 18:13 21:7 24:1 33:8,25 34: 2 37:22 40:8 42:24 45:19,20 46:11 50:2,3 56:16 61:20</p> <p>can't 18:9 21:10 36:7 55:9 62:3 69:25</p> <p>cancer 10:4,10,22 11:25 12:4 14:9 15:20 16:10,19 19:12,22 20:3 21:4 29:7 35:5 39:4,4,6,7 41:13,18,18 42:18,21 43:12 44:4,18,19 45:24 46:19 48:3 49:3,5,6,11,24 50:5,6, 14 51:8,11,16 52:7,12,17,18,20 68: 16</p> <p>cancerous 26:3 29:1</p> <p>cancers 45:18 46:8 52:12</p> <p>cannot 11:21 18:2 26:18,23</p> <p>carcinoma 48:3 51:12 52:10</p> <p>cardiologist 4:19,21</p> <p>cardiology 4:24</p> <p>care 9:8,13 34:17,21,21 35:4</p> <p>caring 21:19</p> <p>carries 51:17</p> <p>carry 10:5</p> <p>case 13:20 14:1,1,14 15:7 20:8 25:24 33:14 34:6 35:21 48:1,21 52:13</p> <p>cases 47:9</p> <p>Cashdollar 58:17,21 60:21 66:12</p> <p>cause 4:10 10:17 45:13 71:20</p> <p>cell 48:3 51:12,13,25 52:3,7,10,12, 12</p> <p>cells 9:25 12:10 13:9,11,14,15,18 14:9 37:17 55:7</p> <p>certain 33:11,12 37:2 43:23 47:22 48:23 62:3</p> <p>Certainly 12:24,25 32:2 41:24 45: 20 48:24,25</p> <p>certificate 30:22 45:11,12 46:3,4 49:1 51:6,7,23 52:16 53:8 61:16 62:11 63:2,3 70:6</p> <p>certify 71:4</p> <p>cervical 58:16 59:11,21</p> <p>Chambersburg 14:24 16:3,4</p> <p>changed 13:22</p> <p>changes 11:11 37:18</p> <p>character 13:22</p> <p>characterizing 31:17</p> <p>charge 7:10</p> <p>Charlesworth 16:23 17:4 21:18 24:17 27:18 40:3,6,22 43:1,4,20</p> <p>Charlesworth's 18:16 19:4 43:7</p> <p>chart 39:19 44:9,10</p> <p>Chicklo 18:19 57:10 58:22 60:21 66:12</p> <p>Chicklo's 18:21</p> <p>choice 33:10</p> <p>circumstance 56:6</p> <p>circumstances 47:21</p> <p>City 2:11 8:16 71:8</p> <p>claim 15:7 16:1 21:14 32:23 37:4 47:11,17,18,18,22 48:24 49:3,14, 18 53:14 57:20 61:2 62:25 63:4 64:6</p> <p>claims 6:9,10,16,25 7:8,17,19 15: 5 22:23 25:23 32:1 45:7,9 47:3,8 48:9,10,13,13,19</p> |

THOMAS ANSFELD - 11/01/01 / HALL V. CUMMINS MUTUAL

completed 19:1
 completely 21:4 31:22 46:20
 complicated 15:24
 components 13:15
 concern 10:2 13:20 29:3 43:21
 concerned 13:21 43:18
 concerning 8:11 25:13 27:4 32:23
 36:13 47:2 48:2 63:23
 conclusion 23:4
 condition 9:24 10:7,8,14 29:19,
 20,24 30:1,21 34:22 35:7,8 37:2
 42:6 47:20 50:5 52:1 53:8,23 56:8
 conditions 10:13 11:5 43:3,22 51:
 25
 conduct 8:4,7,22
 conducted 16:6,6,13 21:17
 conducting 66:2
 congenital 46:10
 consideration 38:17
 considerations 39:23
 considered 10:14 12:5 18:4 38:23
 56:22
 consistent 21:1,8 55:8,14,18
 consult 37:7
 consultant 6:9,11,20 33:21 36:25
 consultation 6:3 27:11
 consulted 6:15
 consulting 5:10,18,20 6:17
 contacted 25:2 27:4
 contained 63:19
 contemplated 35:18 36:4,10
 contemporaneous 16:17
 contradict 15:17
 conveyed 17:25
 copies 20:21 63:17
 copy 56:3,5
 correct 6:23 7:9 9:2,13 16:24 19:
 3,6 20:25 23:7 25:18 27:24 28:2,5,
 9,13,20,21,23 30:11 31:11 32:11
 35:24 36:11 37:10 38:11 41:7,8,10
 42:2,19 43:10,16,25 44:3,7,8,22
 45:1,2,22 46:16 47:13,14 48:11
 50:20 51:15,19,22 52:2,4,6,11,15,
 19 53:1,3,6,7 55:16,19,24 57:11,12
 58:3,13 59:8,15 60:11,14,15 61:11,
 12,15,18 62:10,12 65:15 66:4,21
 67:16,17,20 68:12 69:13 70:7
 corrected 36:6
 correction 59:3,19
 correctly 52:23,24
 counsel 20:18 48:19 57:15 63:20
 64:12
 County 2:11 71:2,8
 couple 12:13 20:23 63:21
 course 56:16 61:25 63:1
 Court 2:6 71:11,16
 coverage 18:11 33:4,13 35:9
 covered 24:23
 credit 6:10
 CREERON 2:7 71:3
 crucial 11:8
 cue 5:24
 CUNA 2:4 5:10,18,22,23,23,24,25
 6:3,13,20,21 23:14,17 24:22 25:16
 28:6,10,18 30:5,10 31:20 33:22
 39:12 45:4 47:4,7 48:20 53:15 57:
 19
 CUNA's 57:15
 current 4:25 7:16
 currently 4:18 5:9
 Curriculum 3:6 4:25
 cutaneous 8:6,8
 CV 5:1

D

Dane 2:11 71:2
 data 6:24,24
 date 15:3 18:23 24:8 29:18 40:8
 46:2 61:23 62:9 64:24 65:22,24
 dated 17:1 26:21 32:22 57:10 58:
 18 59:24 71:20
 dates 27:15 43:18 62:24
 dating 39:8
 day 2:12 8:5 71:6,20
 days 40:24 41:10
 dealing 17:14 43:21
 death 21:21 45:5,6,10,12,13 46:3,
 4 63:2,3
 debits 34:20 38:22,23
 deceased 15:5
 decedent 23:23 34:10
 decedent's 21:20 30:14
 December 15:3 18:17 19:4,8,18

66:2
 decide 51:1 57:19
 decided 50:23 51:3
 decision 18:10 28:18,22 32:1,7
 33:3 38:5 41:5 47:19 48:6 50:12
 61:1
 decisions 48:9
 decline 33:10 34:2 37:21 42:10
 50:8,12,16,19
 declined 50:10 51:2 52:9
 defendants 2:5
 defer 55:20
 degenerate 10:7
 demonstrated 59:4 66:14
 denial 31:10 49:13
 denied 29:19 49:22
 deny 28:19 38:5
 department 35:12 36:13,17 50:22
 deponent's 71:14
 deposited 62:13 63:2,4
 DEPOSITION 2:1 4:6 5:4 20:14
 21:11 46:18,25 54:15 55:2 62:21,
 25 63:11,17,19 71:5,13,15,16
 depositions 20:7,10 46:23
 dermal 59:4 66:15
 dermatologic 8:10 9:24 48:5
 dermatologist 11:3,3 14:5,5 39:
 24
 dermatologists 8:16
 dermatology 7:25
 dermis 55:7
 describe 33:5 47:21
 described 68:13
 describes 19:5 33:3
 describing 13:12 35:13
 despite 13:22
 determination 18:2 19:15 35:15
 50:24
 determine 33:25 35:4
 determined 9:17
 develop 14:7 37:2
 developed 18:18 31:3 60:6,6
 developing 10:6 12:7 16:19
 development 56:13
 diagnosed 9:15,16 10:5 13:4 29:5
 39:1 42:18 45:17 52:17
 diagnosis 7:23 8:11 10:20 13:19,
 23,25 19:12 29:9 32:5 33:16,17
 34:4 40:10 50:6,11,14 52:20 53:
 19,23
 Didn't 21:22 22:6 27:2 35:23 42:
 18 43:6,9 45:23
 died 62:14 63:1
 difference 10:12,13 32:2
 different 14:3,22 51:13,17,20 52:
 5,20 53:4 56:24
 direct 69:25
 directed 64:7
 directly 11:21 26:25 28:7 56:16
 70:1
 director 5:10,19,20,22,25 6:17 7:1
 31:21
 disability 6:6,10
 disagree 54:14
 disclosed 53:9
 discovered 19:6,10,17 40:14
 discovery 19:13 21:16
 discretionary 51:4,5
 discussing 13:20
 Discussion 7:15 58:19 61:21
 disinterested 71:11
 displaced 22:12
 dissimilar 52:13
 District 2:5,6
 division 7:11
 Doctor 11:22 13:3 18:6,8 21:23
 22:13,13 23:5 25:3,12 26:2 30:18
 32:9 48:8 50:15 57:6 66:11
 doctor's 17:24
 doctors 6:14 22:8,9 23:16,18 25:1
 50:13 68:10
 document 36:21 37:11 38:13 39:7
 49:16 57:22 58:5 59:13,18 60:14
 documentation 17:15 53:22
 documented 17:16 27:16
 documents 57:14,15,18 65:10 68:
 22
 does 9:23 10:17 23:25 24:1 30:12
 31:2 34:20 37:11 38:2 51:9 53:12
 58:6,21,24,25 59:17,19,25 60:2 67:
 24 68:1
 doesn't 23:6 38:10 50:1 65:1
 done 11:14 13:24 53:2 57:17 62:

22,24 65:12 70:10
 Doty 2:10 71:7
 drain 56:18
 duly 4:9
 duplicated 23:20,21
 during 7:25 30:21 62:4,6 63:2,5
 duties 6:1
 dysplastic 9:21,24 10:1,4,5,7,9,
 14,16,20 11:7,24 13:19,25 14:17
 15:15 21:3 33:17,23 34:22,24 35:
 5,7 37:13,16,18 38:6,8,9,9,14,15,
 18,20 39:2,5,14,15 40:11 42:4 44:1
 49:10,12 51:10,20 52:3,21 53:6,11,
 12,16,18,21 54:1,12

E

E-N-D-E-R-S 58:9
 each 23:15 29:9
 earlier 42:20 43:6
 early 14:2 31:6 41:16
 easier 5:8 57:7
 East 2:10 71:7
 effective 61:23
 effort 28:15
 efforts 26:24
 either 8:11 10:6,16 14:16 22:11
 29:12,14 33:9 34:2 37:22 49:13
 50:7,10 53:20 56:16 65:12
 else 32:13
 employed 4:18
 employees 6:12
 end 21:13 37:4
 Enders 58:9 60:21
 Enders' 59:17
 entertained 36:1
 entirely 14:3
 entry 17:23
 equally 18:12
 equivalent 14:9
 especially 11:5
 establish 19:21
 established 22:17
 et 2:4
 evaluate 11:10,15 48:10
 evaluated 8:12 17:4 18:20 29:11
 34:16 37:5
 evaluating 21:13
 evaluation 8:5,6,22 13:23 14:4
 15:4 16:1 18:17 19:8 21:17 25:15,
 24 48:5 49:19 50:9 59:14 67:21
 even 29:23 36:24 60:22 63:18
 event 12:15 17:20
 events 21:9
 ever 22:1 26:23 29:5 39:1 43:2,3
 63:11,12,22
 every 11:10 36:22
 everyday 13:5
 evidence 42:8
 exactly 27:14 56:14
 Examination 3:2 4:13 8:8 57:4 71:
 18
 examinations 8:4,7
 examine 11:18
 Example 11:19 13:20 68:23
 exceed 33:11
 except 4:3 12:20
 exception 64:4
 excised 18:22 58:1 60:7
 excision 11:12
 excuse 41:10
 Exhibit 5:4,5
 Exhibits 3:5
 existed 24:22
 expect 31:20,25
 expected 19:11 26:1
 experience 58:4
 expert 9:7 12:19 13:17
 expired 15:6

F

fact 31:12 35:20 38:4 44:15
 failure 28:24 30:25
 fairness 54:14
 familiar 13:5 36:19
 family 10:3,16 11:6,7 35:4,18 36:
 2,4 38:19,25 39:1,3,7 41:13,17 53:
 20,20
 far 40:6
 fast 51:16
 February 30:4 32:9 58:15,18,20
 59:16 65:13 66:11 67:14 68:8,13
 69:9

Federal 71:16
 feel 12:3
 few 37:17 40:24 41:10 57:2
 Fifty 50:18
 file 25:25 26:1,17,18,19,23 47:8
 48:24 49:21 57:7,16 67:21
 filed 64:1
 files 47:11,17,18,18,22 48:20 53:
 14
 filled 39:9 41:22 42:15,22 44:11,
 23 68:15
 finally 6:10
 find 26:2
 finding 10:9,10,20 11:24 12:9 13:
 10 14:8 37:12 38:13 39:13 42:3
 44:1,4 51:20 52:21 53:4,5,16,25
 55:6,10
 findings 13:2 55:23
 fine 4:2,7 24:1,19
 first 4:9 12:13 15:1,2 26:13 33:3
 34:16 35:2 41:17 49:1,15
 five 9:14,18
 follow 56:8
 follow-up 11:9 34:21 35:3 39:18,
 20,23 40:15,20 41:3,6 42:9 44:15,
 16,17,18,20 48:5 53:22
 followed 10:15 11:2 34:15
 following 8:20 11:5 15:5,6 18:16
 21:16 29:7,25 30:16 40:3,21 45:4
 follows 4:11
 force 23:25
 form 4:4 12:21 16:19 19:1,25 21:6
 28:25 31:14 32:16 39:10 41:18 42:
 13,17 44:18 46:11 48:2,16 49:9
 52:7 53:24 54:3,7
 forms 39:5 45:19
 found 9:20 10:1 14:2 21:3 26:18
 27:21 41:11 62:1
 four 26:22
 frame 14:13 62:4,6 64:15
 front 15:10 47:23
 full 4:15
 further 44:24
 future 12:7

G

generally 32:5
 George 16:14
 getting 12:19
 give 32:6 40:12 45:23 53:15 56:3
 given 26:13 31:8 35:4 47:18
 glasses 24:3
 goes 56:16
 Good 70:10
 graduate 5:14
 grand 8:10
 gross 20:11
 Group 2:4 5:10,18 6:4,13,20 33:22
 37:1 48:13
 groups 8:17 37:17
 growing 13:21 14:15,18 55:25
 guide 36:16,19 37:3,7 38:2

H

Hall 2:3 14:23 15:6 16:11,20 17:3
 18:1,4,17,25 19:11,17,21 20:3 23:
 16,23 25:3 28:24 29:19 30:15 33:
 4,15 34:11 35:16,18 36:2,4 39:9,
 13,17 40:2,5,10,20 42:1,15,21 43:
 3,12 44:10 45:24 46:19 57:11 58:
 23 59:3 60:2,19 62:1,13,17 63:22
 66:14 68:15
 Hall's 17:9 19:18 26:18 38:25 48:
 24 52:13 61:2 63:16
 handwriting 32:19
 happened 21:9 34:4
 Harrisburg 2:19 26:8,22 28:12,16
 having 29:6,19 51:24 58:11
 health 6:12 60:3
 hearing 18:6
 help 22:7
 helping 57:19
 here 9:7 15:16 17:7,10,24 27:14
 40:18 41:25 52:16 57:7 64:8 66:13
 67:6
 hereby 71:4
 Hill 2:16
 himself 13:4 43:12 49:2 69:25
 histology 56:12
 history 5:17 10:3,16 11:1,6,7 17:
 3,5,5 18:21 19:5 35:5 39:3,7 41:13
 49:3,5 53:20,20 55:24 57:23,25

THOMAS ANSFIELD - 11/01/01 / HALL V. CUMMINGS MUTUAL

58:5,6,10,23 59:10,18,25 60:9,17,
22,24 62:5 68:19 69:10
home 33:6 47:25
homeowner's 31:23
hope 52:24
hospital 8:9 14:24 16:4 17:16 21:
16 34:7 64:2
how 23:25 35:2 40:13 50:16
However 33:18 66:24 67:18
Hurley 16:6,12,12 21:1 22:4,5,10,
14 25:3,11,20 26:25 27:3 29:14,18
34:8,13 41:1 46:17 64:2 68:3
Hurley's 25:13,16 26:7,16 27:6
28:11,19
husband 63:23

I'd 5:3 48:18
idea 27:14 49:15 68:5
identical 10:10
identification 5:5
identified 3:5
illness 60:9 68:19
impact 14:19
importance 33:14 34:10,16
important 33:21 35:10
impressions 17:25
in-scapular 59:4 66:14
inaccurate 31:7
include 6:2,6 8:8,10
included 6:15 7:24 17:5 18:21 24:
16 25:2
includes 8:5
including 24:17 29:10 45:10 60:
20 63:25 70:5
inconsistent 55:14
indeed 13:25 33:6 65:22
independent 6:18
indicate 28:14,24 30:12,25 49:2
51:7 53:25 54:3,11 59:25 60:16
67:24 69:10
indicated 42:5 59:7
indicates 15:20 16:19 37:16 46:8
49:9
indicating 30:5 59:6 60:22,23
indication 16:9 44:15,16,24 49:23
51:10 52:10 69:14
individual 7:2,10 10:2,4 11:6,18
13:18 14:14 13:31,13 34:15,20 35:
9 37:1 40:16 45:5,7 50:4,5,13 51:
1,24
individual's 8:18
individuals 7:17,20
infancy 46:8
inform 10:25
information 7:4,12 8:11 15:16 17:
25 19:21 20:2 24:22,25 26:6,10,25
27:3,22 29:24,25 30:1 31:5,25 32:
5,10,12 33:15,18,24 34:3,14,23,24
35:1,10 36:6 37:11,21 38:1,12,24
39:11,12,16 40:5,9,24 41:4,11,14
42:20 43:4,8,12,17 45:10,23 46:15
47:2,8 48:4 53:15,19 56:1 60:17,
18,25 62:17 63:17,18 64:12 67:7
68:3,13,20 69:1,10,17,18,21,24 70:
1
informed 12:6 25:7 64:5
initial 16:2 20:6 21:17 27:6,8 33:
20 34:25 40:13,14 41:5
initiated 45:8
inspection 20:12,12
instance 2:3 14:14
instruct 11:14,17 21:22
Insurance 5:20 6:5,6,7,7,8 7:5,11,
19 8:18 19:1,19 28:25 30:23 33:22
35:9 36:21,22,25 37:11 38:4,13
39:9 42:13 47:3 61:14,16
insure 53:16,18
insured 24:14 31:22 39:13 49:1
51:7 52:16 53:9,25 54:11
insured's 49:23 52:9
insureds 46:13
intake 17:1
interest 71:12
intermittent 7:18
internal 4:23 35:12 36:12 37:11
38:12
international 6:7
internist 4:19,22 7:22,24 8:3,13 9:
11 14:12
internists 9:3
interpose 12:13 54:21 63:8
interpretation 15:13,17

interpreted 52:23,24
interrogatories 71:10
invading 55:7
investigation 45:4 57:16,20
involved 7:7 13:13 22:8,9 26:8,20
27:16 32:15 34:6 35:19 56:17
involvement 32:13
irregular 14:15
irritated 60:5
isn't 14:11 27:23 28:20 32:10 41:7
42:5 44:12,25 46:15 51:14,21 52:
7,13,21 53:6
issuance 50:7
issue 27:25 34:1 50:24 51:19
issued 30:22 33:8 47:4 61:16 62:
11 70:6
itself 12:3 13:11 33:23 35:7 42:6
44:19

J

James 16:6
January 18:20,24 25:6 26:15 56:
22 57:10 61:9,24 62:6 64:17 65:
13,21,25
job 5:25
Judy 25:6
July 59:24 61:10 62:7 65:3,25 67:
5,15 68:9,14,23 69:9
jump 58:8
Jumping 58:17 59:16
June 65:25

K

keep 7:3,6
keeps 6:24
Kelley 3:4 4:1 9:6 10:23 12:12 13:
7 18:13 19:24 20:5,22 21:6 22:16
23:3,12 24:9 31:13 32:16 42:23
43:14 44:5 46:21 48:16 49:25 54:
21,25 57:2,5 61:4 62:20 63:7,15
64:19,25 65:9 66:7,10,25 67:10
68:17 69:5 70:10
kept 6:25
kind 40:15 59:7
knew 19:21 20:3 34:5 36:3 43:12
45:24 63:23 68:15
know 17:7,24 22:1,25 23:8 24:2,
13 32:4 35:21 36:1 39:3,4 40:2,13,
17 41:17,20 43:6 49:16 50:2 52:25
54:20 56:14 61:25 62:17 63:10 64:
4,6,15,22 65:1,2,16 66:7 68:9
knowledge 28:6 49:20,21 62:18
63:12
known 10:8 30:20 48:3

L

label 47:8
language 66:17
large 48:13
Larson 7:21 21:22 22:11 32:25
33:1 35:23 36:5,18
last 9:14,14,17,18 20:23 26:12 40:
24 41:10 64:5,12 70:5
lateral 18:18
Law 2:10,18
lawsuit 64:1
lawyer 35:19,20
lawyers 63:16
layperson 19:15
least 11:15 14:19 19:7 27:19 31:6
48:1 54:4
left 59:4 60:4,6 66:14
leg 17:4
legal 23:4 35:12,18 36:1,4,10,13,
16,17
lesion 13:21 14:15,18 17:11,14,17
19:9 21:4 29:11 35:3 40:14 46:20
48:6 55:25 56:14,17 59:4 65:14
66:15,19
lesions 8:12,16 9:16 11:13,16 13:
17 14:6 17:14 56:9
let 11:22 12:12,21 13:16 15:24 16:
16 19:6 20:1 22:19 23:14 24:5 25:
12 26:13 30:8 33:21 35:24 40:12
45:11 48:8 51:23 54:20,21 57:6,9
59:23 63:7 66:11 68:8,18 69:7,8
letter 11:14 23:14,15,18,20 30:4,7,
9,10,12,14,14,15,24 31:19 32:9,22,
25 33:2,3,5 36:3,6,7,9 37:23,24 58:
17,20,21
letterhead 23:17 59:17
letters 32:19

life 6:6
lifetime 63:3
like 4:5 5:3,24 19:3 29:3 48:18
likely 18:4 43:1
limit 33:12
limited 33:7
limits 51:18
line 7:5 24:5
lines 6:3 7:2
LISA 2:7 71:3
list 24:1,18 30:19 44:16,20 53:12
listed 29:11 30:1 34:7 42:4 45:12,
14 48:1 49:7 51:24,25 52:16 68:19
listing 35:14 49:12
lists 16:5,12 37:14 38:7,9,15,18
49:6 53:12
literature 46:7
litigation 47:2
little 15:24
LLP 4:20
locate 26:23
location 11:19 56:15
long 5:17 23:25
look 11:13,15 54:18
looked 66:23
looking 55:21
lost 22:12 26:19 34:14
lower 11:20
lump 18:18 19:5,9,13,15,17 56:13
lymph 59:21 65:14
lymphatic 56:15

M

M.D 4:8
made 13:19 25:5,15 26:13,15,24
28:15,19 32:1,7 34:4 41:15 43:11
50:12 53:19,23 61:14 63:1 65:19
67:22 68:6
Madison 2:11 4:20 5:11 8:17 71:
8,20
maintain 34:18,19
majority 10:1
make 11:11 13:24 18:2 19:12,15
21:10 35:2 47:19 48:6 56:7 68:18
making 18:10 24:23 35:15
malignancy 60:1
malignant 10:8 12:8 18:22 29:12,
13 30:2 45:13 53:4,9 55:8,14 56:
10 58:1,16 59:1,2,5,11,19 60:8,24,
24 62:1,5 66:16,18 67:8,25 68:25
69:21,22
malpractice 20:8 64:6
manager 7:16
manual 38:7
many 50:16 57:8
March 16:7 58:8
mark 17:6 32:23
marked 5:4,5 47:25
materials 47:8
matter 2:2
may 10:5 11:6,18 12:6 14:6,18,20
18:8 19:3 25:12 32:1 33:23 35:6,8
48:8 51:3 56:9,10,17 57:2
McNEES 2:18
mean 9:23 20:20 22:6
meaning 26:18
means 13:14
medical 5:6,10,18,20,22,25 6:14,
17,18,20 7:1 10:17 15:23,25 17:5,
20 20:8 21:14,15,19 22:25 23:11
24:16,22 26:17 27:12 28:4 29:6,8,
13,17,18 30:20 31:4,21 34:11 36:
25 39:18,20 42:8,11 44:25 46:7
49:7 59:10 61:8,22 67:14 68:2 69:
18
Medically 9:23 40:21
medicine 4:23 5:12
melanin-containing 13:15
Melanocytes 55:12,13,13
melanocytic 12:10 13:9,10,14,18
14:9 37:17 55:11
melanoma 7:23 9:15,17,20 10:3,
8,17 11:7 13:4 14:2,7,16 18:5,9
29:9,12,12 30:3 35:5 37:20 39:5
44:4 45:13,14,16 46:5 51:14 52:
17,20 53:4,10,12,21 58:12,16,25
59:2,5,11,20,22,25 60:8,24 62:2,5
66:16,18 67:8,25 68:25 69:23
melanomas 45:18
melena 58:11
Melli 2:9 71:7
member 29:6 41:18
members 25:5 38:18,19 39:1

memo 35:12,13 36:13,16 38:2
memory 15:2
mentions 57:25
metastasis 56:24
metastasized 56:18
Michael 58:17
micro 54:16
micropathologist 55:6
microscopic 8:22 12:9 13:10 14:8
20:12 54:18 55:23
Middle 2:6
might 63:13
mind 15:20
minimal 33:12 34:2
minute 7:13 24:3 66:25 67:1,1
misleading 31:7
misplaced 26:19
misrepresentation 29:22
misspelling 58:12
misstates 42:23 43:14
mole 12:9 13:11 15:13 16:18 17:
21 18:8,22 20:15 21:24 25:21 26:3
27:17,19 28:1,3,22,25 29:13 30:1,1
32:10 33:19 41:1 43:19 54:4,4,8,
12 56:12,21 58:1 59:1 60:5,25 63:
23 64:3,8,9,10 67:9,16 69:22
moles 8:14,20 9:5 60:4
monthly 11:15
months 9:18 18:25 24:1,7,11 40:3
more 10:8 31:3 39:24 55:8
mortgage 6:7 7:5,11,19 33:6 47:
25
most 5:7 43:1 59:11
mouth 22:6
Mrs 23:16 63:16,22
Ms 21:22 22:11
multiple 52:11
must 12:4 68:1 69:1
Mutual 2:4 5:10,18 6:3,13,20,21
23:14,17 30:10 31:20 33:22 39:13
45:4 48:20 53:15

N

N-A-R-D-I 7:21
n-o 59:20
name 4:15 7:10,16 17:12 26:12,22
named 25:10
Nancy 2:3 30:15
Nardi 7:21
nature 51:25
neck 18:19 19:5,13 56:13,13
need 11:8 14:4 33:24 35:2 53:18
56:14
needs 12:5
negatively 29:23
neither 28:6
never 25:16 63:16
nevi 10:1,4,7,16 11:7 12:7 13:19
35:5 38:18,20 39:2,5 46:10 53:21
nevus 9:21,24 10:5,9,15,20 11:24
13:19,25 14:17 15:15 21:3 33:17,
23 34:22,24 35:7 37:13,16 38:6,8,
9,9,14,15 39:14,15 40:11 42:4 44:2
49:10,12 51:10,21 52:3,21 53:6,11,
13,16,18 54:1,12
new 8:11 11:13,16 60:12 68:11
night 64:5,13
NIH 64:10,16 65:8,23
node 56:21,23 58:16 59:21 65:14
noncancerous 54:9
nonmalignant 54:5
nonspeculative 13:3
nor 13:16 28:6 29:17 49:16 56:6
normally 25:22 37:21 63:6 68:20
Nos 3:5
notable 59:11
Notary 2:8 71:3
notation 26:20,21 27:18 43:19
notations 32:18
note 19:4 59:17,23 66:12 67:5 68:
23
noted 37:19
nothing 28:14 30:24 31:9 36:12
71:19
notice 2:7 71:17
November 2:12 19:19,22 20:3 38:
24,25 61:14 71:6,21
now 15:10 16:9 17:7 18:23 19:11
23:5 31:16 55:1 57:13 59:20,21
60:20 62:21 64:25 66:23 71:15
number 6:2 7:17 22:7,9 24:15,17
29:23 40:5 49:6 60:3
NURICK 2:18

THOMAS ANSFELD - 11/01/01 / HALL V. CUMMINS MUTUAL

O
 o'clock 2:13
 oath 4:11 46:18
 Object 21:6 31:13 32:16 48:16 50:1 63:9
 Objection 9:6 10:23 18:13 19:24 20:2 5:22 16:23 3:12 42:23 43:14 44:5 46:21 54:22 62:20,21 63:8 68:17 69:5
 objectionable 12:17,18 13:1
 objections 4:3 12:13,20
 obtain 11:1,9 21:14,15,18,22 22:19 24:22 25:23 26:7,24 27:3,10,12 28:15 33:24 34:3 35:1 42:11 49:7 56:3
 obtained 17:4 18:16 22:1,21 23:22 24:13,16,24 25:16 26:11 29:8 34:11 45:10,12 68:20 69:18,24
 obtaining 27:21 44:24
 obviously 54:25
 occur 37:22
 occurred 19:6 30:20 61:23 63:12 65:2,3,5
 off 7:13,15 24:3 58:19 61:20,21
 office 23:5 25:7,17 26:16 28:19 47:24
 Oh 47:16
 Okay 24:12,20 48:22 57:22 63:14 64:20 69:7
 once 8:9 11:15 53:23
 oncologist 29:10
 oncology 59:23
 one 10:14,19 12:15 13:13 17:14,15 18:3,3 25:5 26:11 27:16 28:6 29:7,23 31:5 34:1,3,6 40:5,13 42:15 43:18,23 48:1 49:1 51:6 52:12 57:18 63:11 65:7 67:14,15
 ongoing 10:17
 only 6:17,19 23:1 27:25 33:9,10 34:1 35:19 39:14,15 44:19 46:13
 opinion 48:2
 order 23:11 48:6
 organization 6:11
 original 11:12 25:2
 other 5:8 6:14 10:6 12:7 14:20 16:22 17:20 29:18 32:4,14,18 33:10 34:1,8 38:18,19 39:5,15 41:12 42:25 46:1 47:3 56:9 57:1 66:6 69:21 70:9
 out 26:2 27:21 39:9 41:11,22 42:15,22 44:11,23 62:1 63:4 68:15
 outpatient 16:3,5 17:16 59:23
 outside 54:20,22 33:55:1
 over 32:15 46:22 57:14 61:25
 own 7:6 17:25 19:12 32:19 43:7 56:2

P
 Page 3:2 21:2 38:7
 pages 26:22
 paid 30:13
 pain 17:4
 Part 8:5,13,19 15:25 32:14 57:16,16,25 58:14 59:13
 participate 5:13 6:11 8:3 48:12
 participated 48:8 49:19 61:1
 particular 47:20 48:12 59:18
 particularly 46:12
 parties 71:12
 partner 4:19
 parts 11:20
 past 17:5 59:10 60:22,24 68:7
 pathologic 13:24 33:16 38:17 59:6
 pathological 10:9 37:12 42:3
 pathologically 52:21 53:17
 pathologist 13:16 14:12,22 20:11 54:17,19 55:10,16,21
 pathologist's 15:13
 pathology 8:19,21 9:1,4,12 10:19 11:23 13:2 14:8,20,24 15:8,12,19 21:9 37:15 43:24 44:1 49:10 53:5 56:3,4 59:5 60:7,23 61:19 64:11,14,16,16,17,21 65:4,12,16,18,19,21,22 66:15,18 67:7,15,18,24 68:10,24 69:2,4,11,12,16,17
 patient 10:21,25 11:2,10,14,25 12:5,6 14:4 18:4,19,20 19:7 21:20 23:2 25:8 27:13 29:11 43:8 54:5 56:4 58:7 60:13,18 68:21 69:14,15,20,25

Patients 8:15 9:19 10:19 11:9,17 12:4,15 13:13
 pay 30:5
 paying 31:23
 Pease 2:10 71:7
 PEDERSEN 2:15 3:3 4:7,14 5:3 12:24 20:25 24:10 54:23 56:25 61:7 63:14 64:23 65:7 66:5,23 67:2,13 69:7 70:8
 pending 2:5 71:16
 Pennsylvania 2:6,16,19 16:4
 people 26:12 53:18
 per 8:5
 percent 40:1
 perhaps 25:20
 period 5:21 45:14 46:5 62:18 63:5
 person 28:3 71:11
 personal 57:22,25 58:5,6
 personally 7:3 8:22 17:23 36:22
 personnel 6:9 22:24 25:23
 pertains 53:20
 phone 24:23
 physical 8:4
 physician 5:9 8:17 17:13 25:10,10,11 29:9,14 33:20 34:7,12 39:24 40:15 41:3 49:8 54:5 58:4 62:16 69:1 70:2
 Physicians 4:20 21:19 24:17 27:13 29:10 34:5 38:1 41:12 49:6 50:6 62:4 66:1
 picture 36:24
 piece 39:16
 pieces 31:5
 pigment 9:25
 pigmented 14:6 18:8
 place 25:15 53:24 54:3,7 62:25
 plaintiff 2:3,4 71:9
 plaintiff's 47:10 48:21
 play 47:1,10
 played 31:15,16 47:4
 playing 31:17
 please 4:15
 plus 38:23
 point 12:7 17:13 18:23 25:19 35:17,25 43:22 51:4
 points 35:6 41:7,9 42:1,4 44:12,12,14,25 50:16,18 51:1
 policies 45:3 47:3
 policy 18:11 28:18 30:6,13,15 31:24 33:6,7,7,8,9,12 34:1 35:15 37:21 38:5 46:2 48:7 50:7,16,17,24 51:2,19 52:9 61:23
 portion 18:18
 portions 47:17
 possession 21:12
 possibility 19:9 27:19 43:18 46:10,12 56:9
 possible 18:2,6 19:14 29:21 56:15
 possibly 33:19
 posterior 11:20
 postgraduate 5:15
 postpone 42:10 48:5
 postponement 42:11
 postponing 37:25
 potential 10:25 12:8 21:14 37:1 56:10
 practice 8:13,19 9:3 13:6 56:2
 practicing 4:21 22:5 9:8,3
 preceded 46:2 65:24
 preceding 40:4
 preface 57:13
 premium 50:9
 prepare 36:3,5
 prepared 32:25 36:5,7,9
 presence 18:21
 present 6:19,22 45:15,17,19,21 46:5,11 60:9 68:19
 presentation 41:17
 presented 12:16 35:3 58:23
 presume 58:11 59:20 70:2
 pretend 13:17
 Previously 5:19 45:16,25 51:8 52:17
 priced 50:25
 primary 56:23
 print 24:2
 prior 19:7 34:6 49:3,5,16,23 51:25 57:19
 problem 11:13 30:24 31:19
 problems 10:18 31:9
 procedure 16:5,13,18 47:24
 procedures 45:3
 process 27:7 45:7,9 47:22 55:8,

15,18
 processes 35:14
 produced 64:10
 product 33:10
 products 6:5
 profession 29:6
 Professional 2:8 71:23
 professor 5:12
 programs 6:12
 progression 56:11
 progressive 51:16
 pronounced 5:22
 protection 33:6 48:1
 protocol 14:3 23:10
 protocols 23:8
 provide 27:11 28:3 31:25 33:13,25 35:8 36:24 37:12,25 43:3 48:13 56:5
 provided 4:25 6:19 23:16 25:1 32:5,12 36:17,18 38:12 40:24 41:11 43:8 47:7 48:19 57:15 62:17 63:20 64:12 65:5
 providers 8:18
 providing 47:1,10 62:3
 Public 2:8 71:3
 purpose 33:2
 pursuant 2:7 23:1 24:13 71:17
 put 12:22 22:6 35:14 44:20

Q
 question 4:4 9:10 11:23 12:14 13:8,9 14:13 16:16 17:6,10 19:25 20:1 27:15 29:5,7,21 31:6,14 36:8 40:10 43:2 45:16 48:17 53:10 55:5 63:9 70:1
 questioned 17:13
 questions 6:5,16 12:25 25:12 29:22 40:18 48:23 57:1,3 65:1 66:6 70:9
 quiescence 46:11
 quotation 30:17
 quote 24:5 68:22,23

R
 raised 19:8 29:3,21 31:6 40:10 45:16
 raises 14:13,19
 Ramirez's 54:15
 ran 61:10
 range 50:21,23
 rapidly 13:22 14:18 55:24
 rather 51:10 55:22
 rating 36:16,19 37:3,7 38:2,7,16,21,21 39:19,25 44:9,10 50:10
 re-review 68:6,11
 read 4:5 50:2 55:4 56:4,6 67:14
 really 12:19 40:12 42:21
 reason 30:17 35:2,11
 reasons 30:5,12
 receive 23:10 34:20
 received 11:23 15:4 24:15 37:15 39:17 48:4
 recent 5:7 31:3
 recently 25:1
 recognize 23:17
 recommend 6:18 25:19 27:2
 recommendation 34:25 42:9
 recommended 37:17 48:4
 record 4:16 5:6 7:4,13,15 12:23 16:8,10 17:1,2,3,16 20:23 24:4 27:16 28:14 32:18 34:8 57:9,11 58:19 61:20,21 65:5 66:21 71:14
 recordkeeping 7:3
 records 7:6 15:23,25 16:3,17,22,23 17:20 18:15 19:20 21:14,16,17,19,23 22:3,3,11,19,21,25 23:5,9,11,18 24:13,15,16,24 25:9,13,16,23 26:7,8,17 27:5,7,12,21 28:4,8,10,11,15,20 29:8,13,17 31:4 32:14 33:20 34:9,13,18,19 35:20 37:15 42:12 44:25 49:7 57:7 58:14 60:20,20 61:8,22,22 62:8,16 65:20,23 66:1 67:14 68:2,4 69:9,19 70:2
 recurrent 59:22
 red 60:7
 reduced 71:13
 REEXAMINATION 61:6 66:9 67:12
 refer 29:3 59:17 67:15
 reference 17:19,21 58:10
 referenced 58:5
 references 61:8,13 65:19 70:4,5

referral 16:13 18:16
 referred 8:16 9:19 15:7 17:11 18:19 25:3 61:22 64:14 65:10,17
 referring 14:1 16:9 25:11 29:14 32:8 34:6 58:20 66:18 70:4
 refers 51:12 57:11 59:19 67:8
 reflect 28:10
 refusal 30:5
 regard 6:4 61:1
 regarding 47:9
 Registered 2:8 71:23
 reinsurance 36:23
 relate 58:21
 related 69:17
 relates 13:9 57:22
 relationship 5:17
 relative 71:19
 release 23:8,11
 released 23:1
 releases 23:5
 relevant 13:3
 reliable 69:2
 rely 9:1,4,12
 remain 23:25
 remaining 27:25
 Remember 27:15 64:24
 remind 43:17 50:7 68:1
 removal 8:20 16:18 17:8,21 27:16 29:25 40:21,22 41:1 52:11 54:4 56:12
 remove 8:14
 removed 15:14,21 16:10 17:12,15,18 18:5,8 20:15 21:5,23 25:21 26:4 27:19,23 28:3 30:2 33:19 37:20 43:19 46:20 54:8 56:22 58:12 59:3 60:4 65:15 66:19 67:9 69:22
 render 35:7 48:2,6
 repeat 9:10
 rephrase 20:1
 report 10:19,21 11:23,24 13:2 14:8,21,24 15:8,10,12,19 16:2,5,8,12,14 18:23 21:9 37:16 38:17 43:24 44:1 49:10 53:5 56:3,4,11,16,18 60:10,12,13 61:19 64:11,14,16,16,17,21 65:4,12,18,19,21,23 67:18,24 68:10 69:3,4,11,16,18
 reported 54:4
 Reporter 2:8 71:11,23
 reports 8:20,21 9:1,4,12 65:17 68:18
 represent 48:18
 represented 56:23
 represents 39:5
 request 14:21 21:15 22:22 26:16 27:6,10,12 55:25 71:9
 requested 21:18 22:2,23 68:2
 requesting 23:18 68:3
 required 8:17 23:8 38:16 46:13 50:16 53:25
 requirement 54:11
 requiring 55:1
 reread 69:11
 rescind 28:18 33:4 35:15
 rescinded 30:16
 rescission 18:11 31:10 35:14
 resected 33:17
 resection 59:12 65:22 68:11 69:11
 resections 8:24,24 64:9
 reserving 4:3
 residency 7:25 8:1
 respect 6:25 7:5,7,19,23 9:4 14:23 17:8 20:11 37:12 38:6,13 44:9 51:24 64:2
 response 26:17 43:1
 responsibilities 6:2
 responsibility 25:22 56:8
 responsible 7:2
 restrictions 33:8
 retrospect 17:10
 revealed 30:21 59:5 66:15,18
 review 5:6 6:4,10 7:1 8:19,21,24 14:21 15:1,5,8,23 16:2,22 20:7 30:8,17,18 34:11 35:13 37:7,18 41:15 44:24 47:19,22,25 49:18 55:25 62:22 66:2 67:5 68:6
 reviewed 14:23 15:2,25 16:2,23 20:6 32:20 38:4 57:19 58:14 65:20,24 66:1
 reviewing 7:8 31:4 37:15 62:16
 reviews 6:19
 Richardson 32:23
 right 15:10 24:5 27:23 28:16,17

THOMAS ANSFELD - 11/01/01 / HALL V. CUMMINS MUTUAL

32:10 40:9 41:4 42:5 44:13,18,21
48:10 52:14 53:2 54:18 57:13 67:
19 69:4,12
rim 60:7
risk 12:5,6 15:4 33:23 34:20 39:25
51:17,17
risks 10:6,25 33:11 34:2 37:1
role 31:15,16,17 47:1,5,10,14,15,
16
room 50:8
rotations 7:24
rounds 8:10
routine 56:2
Ruhly 2:10 71:7
Rural 5:20

S

said 46:23 71:8,13,14,17,20
Same 20:5 23:12 53:10
say 14:20 58:25 62:3
saying 19:11,16 57:13 68:8
says 49:6 58:11 59:20 66:13,21
scenario 40:12
scenarios 18:3
second 17:17 20:7 35:3 50:15 51:
6 66:13
secondly 27:17 34:13,19 40:15
43:19
section 60:9 67:6 69:10
see 11:19,21 13:18 17:2,3 40:6
48:1 49:12,17 50:4 57:23,24
seen 14:16 21:10 25:8 30:9 40:25
41:12 46:25 49:16 50:13
selecting 47:12 48:12
send 37:23,24
sense 32:6,8
sent 6:25 23:15 26:9 28:11 30:4
35:20 64:9,10
sentence 24:6 66:14
sentinel 56:23
September 5:19
series 6:5
serious 10:8
services 7:25
set 14:3
seventy-five 50:18
several 13:13 18:25 19:7,17 25:1
44:6 69:23
shall 24:7
Sharfman 59:24 60:21 68:24
Sharfman's 67:4
shirt 60:5
shorthand 71:10
shoulder 56:12 60:6
show 23:14 29:9 47:11 51:23 57:
6,6,9 59:23 66:11
showed 30:17,18 40:25 53:14 60:
7,23 67:8 68:25 69:3
showing 59:21
shown 61:9
shows 14:21 39:7
sign 4:5
signed 23:21,23
significance 12:10 13:10 17:2
significantly 51:17
similar 47:9 48:20
simply 54:8
since 5:19 10:4 25:8 26:23 29:22
49:15 50:12 65:19 69:25
sir 8:15,25 32:21 48:15
sit 15:16 17:7,24 40:18 41:25 64:8
site 6:21 11:12 56:19,24
situation 13:12 45:11
six 9:17 11:10
skilled 11:4
skin 8:6,12 10:3,14 11:12,15,19
15:15 35:5 37:16 39:3,4,6,7 41:13,
18 48:3,6 51:8,11
slide 68:6
slides 8:23 55:21 68:11
small 14:14 60:4
Smith 44:10
some 12:7 31:21 46:7 54:15 59:7
someone 25:19 26:1 36:24 53:16
something 14:20 31:3 69:12
somewhere 68:7
sorry 11:22 22:6 35:23 47:7 56:20
67:2,3
sort 12:19
source 60:16,18
speak 25:20 26:2 28:7 63:22 70:2
special 50:9
specialist 4:22 14:6

specialty 29:10
specific 13:1
specifically 6:15 7:17 9:5 14:4 21:
22 33:16 57:18
specimen 13:24
speculating 55:22
speculation 10:24 12:17
spouse 11:17
spread 56:15
squamous 48:3 51:12,13
stack 47:7
staff 25:5 26:11
stage 14:2
standard 9:3,8,13 33:9,25 34:17
47:24
started 27:7
starting 5:7
State 2:9,11 4:15 13:16 54:6 60:3
68:22 71:1,4,8
stated 18:5 19:17 34:13 69:22,23
statement 21:10 37:14
statements 54:15
States 2:5 24:6 30:15 58:15 59:2,
10 60:2 67:7 68:24
stating 37:14,23,24
statistical 6:24,24 7:12
statistically 7:6
STEPHEN 2:15
steps 27:2 48:10
Steve 64:19
still 12:14
stipulate 24:9,10 40:8
stipulations 4:2,3
Street 2:10 71:7
stress 11:8 12:4
stronger 24:3
style 32:2
subsequent 18:15 20:6 25:23 29:
8 41:1
subsequently 9:16,19 14:1 18:3
26:11 41:12
subspecialty 4:23
substandard 38:21
such 7:1 9:3,11 33:22 34:22 36:25
56:8
suggest 62:8
suggested 13:23
suggestion 33:5
sun 46:12
supplied 20:23 63:16
supported 69:2
supposition 18:7 43:7
Sure 7:14,16 9:11 11:11 13:24 18:
9 30:8,8 32:17 35:2 56:7
surgeon 11:4 20:15
surgery 43:2
surgical 16:5,8,18
surrounding 11:12
suspicious 8:15 9:16
sworn 4:10 71:18
symptoms 12:16
syndrome 38:8,10
system 8:6,8

T

tables 36:23
take 8:24 48:10 55:20 56:16 57:20
taken 2:2 20:7,10,14 27:3 62:22
71:5,9,10,16
taking 25:15 54:15
talk 65:17
talked 57:8
talking 46:3 62:21
teaching 5:15
technicalities 32:3
tell 15:12 24:1 31:22 33:21 35:23
54:7 62:23 68:14
telling 69:15
term 9:21,23 18:9 32:4
terms 4:1 13:5
testified 4:10 13:4 21:2 31:14,15
38:4 42:20 43:6 46:18 50:1
testify 9:7 71:18
testimony 12:19 21:1 42:24 43:15
71:14
thank 22:9 38:11 67:10
Thanks 61:5
That's 4:7 6:20 7:10 12:16 20:25
24:19 28:9,17,21,23 31:11 32:11
35:10 36:11 40:8 42:2,19 44:8,18
45:2 51:20 52:13,23 53:3,7,9,11
54:17 55:16,18 58:11,22 59:6,8,15
61:4,12,18 62:8,23 64:14 65:15

66:21 67:17 68:12 69:13,14 70:7
themselves 70:3
There's 26:21 28:14 30:24 36:12
37:22 39:25 69:14
thereafter 71:12
Therefore 25:8
thing 43:23 46:13 52:5
think 11:8 12:14 19:14 22:17 55:4
62:23 65:25
third 24:5 35:4
THOMAS 2:1 4:8,17 71:17
those 6:15 7:20 20:17,18 22:1,2,3
27:4,21 28:7 35:6 40:17 46:23 47:
17 61:13,22 63:19 68:9 70:4
though 12:4 29:23
thought 35:24
thoughts 17:25
three 45:15,17,24 46:5
time 4:4 9:14 11:25 12:21 19:10
21:20 23:6,22,22 25:14 26:6,10
27:4 28:10 31:8,21 34:24 35:22
36:9 37:9 39:8 40:11 41:5,15,22
42:22 43:11 44:10 45:14 46:9 49:2
62:1,4,6,18 63:5,25 64:15 67:21
68:15
times 6:18 7:7 44:6 69:23
title 60:13
today 6:1 15:16 40:18,19,20 41:25
49:16 55:3 64:1,8
told 22:11 34:8 46:18 63:11 68:4
Tommy 15:6 23:23 30:18,19 33:4,
15 34:11 35:16 36:2 57:11
took 46:4 62:25
towards 24:5
traditional 9:12
trained 11:4
training 4:23 5:14 7:22,24
transcript 4:6 21:2 62:14
transcripts 63:18,19
treated 29:5 42:18 50:5
treating 21:23 23:15 27:13 38:1
treatment 8:12
trial 4:5 12:21
true 6:22 46:15 71:14
truth 71:18,19,19
truthfully 46:14
trying 22:7
tumor 10:14 36:16,19 37:3,7 38:2,
7 44:9 56:23
twice 8:9
two 8:4 9:16 17:14 18:2 27:15 29:
2,22 34:5 37:22 39:24 43:18,21
50:6,13 60:22 67:14 70:5
type 50:17 51:13
types 45:19
typewriting 71:13
typical 9:11
typically 58:6

U

ultimate 28:18
under 4:11 30:6,13 31:23 38:5 46:
18 47:21
undergraduate 5:14
underlying 20:8 48:9
understand 25:14 40:6 54:19
understanding 21:8 22:2,10 24:
21,25 25:25 35:17 45:6,9 55:17
56:11,21 63:25
understood 36:9 56:7
underwriter 50:12 51:3
underwriters 35:1
underwriting 6:4 15:4 16:1 32:7
33:7 49:18 50:8,22 51:18
undiagnosed 45:19,20
unequivocally 68:22,24
unfair 62:23
United 2:5
University 5:13,15 8:1
unless 37:25 55:24
unobserved 45:21
unsure 18:12,15
until 4:4 21:20 40:6 42:11,22 50:
14 55:3 60:3 63:20 64:1
up 14:3 34:15 56:8 64:1 66:8 67:4
update 8:10
upon 19:12 22:19 28:22 44:23 45:
1 52:9 71:9
us 15:12 34:9 45:15 68:14
use 32:4
used 71:15
uses 36:23
usual 4:2 60:3

usually 10:17 26:5 56:5

V

valid 24:7,11
various 65:16
verbal 71:9
very 34:1 51:16 68:21
videotape 62:14
view 37:18
visit 19:18 30:20,21 32:9 37:19
40:8,13,23 42:25 46:1 60:13
visited 30:18
vita 4:25
vitae 3:6
vital 39:16

W

Wait 24:3 66:25,25 67:1
waive 12:20
Walker 2:9 71:7
WALLACE 2:18
want 12:22 24:18 31:18 40:12 57:
17 58:8 62:17 66:8,8
wanted 63:10
wasn't 19:2 27:22 36:5 55:3 65:13
way 5:8 50:25 53:2
ways 37:22
We'll 24:9
we're 12:14 43:21 46:3 62:21 64:
20 65:4 70:10
weeks 19:7,17 20:24 63:21
well 21:17 34:10 47:21 49:25 50:3
59:18 62:22 63:7 64:19 66:13
wellness 6:12
what's 12:10 18:23 23:20 33:2 45:
9
wherein 2:3
whether 17:7,11,13,17,24 22:1,25
26:3 31:7 33:25 34:15 38:25 39:
12,17 40:2 41:20 42:17,21 43:6,8
44:19 45:18,24 46:17 51:2 53:10,
15 54:8 63:10 64:15 65:2 68:5,9,
16
whole 71:19
wholly 51:20 52:5
whom 64:6
wife 23:24 30:14
will 6:18 8:7,10 11:9 32:6
William 7:21 59:24
Wisconsin 2:9,12 4:20 5:11,13,16
8:1 71:1,4,20
within 6:15 9:17,18 12:9 13:11,15
40:24 41:10 45:3
without 28:19
witness 2:2 4:9 9:7 20:20 50:1
word 46:4
words 22:6 34:1
work 7:17,20
worked 31:20 36:23
working 5:7
worksheet 15:4
wouldn't 62:16
write 43:5
written 8:21 18:9 23:10 35:12

Y

year 17:7 35:24
yearly 8:7,9
years 8:1 9:14,18 13:13 39:25 45:
15,17,24 46:6
Yet 27:6
yourself 6:14 7:1 9:4,11 22:13 25:
20 55:22 67:18

17

02/23/2000



February 10, 2000

NANCY HALL
517 MT PLEASANT RD
FAYETTEVILLE PA 17222

Dear Mrs. Hall :

Certificate No.: 32534

We are very sorry to hear that your husband Tommy Hall passed away. You have our sincere condolences and deepest sympathies on your loss.

After Tommy's death, we received a notice of claim under the Home Mortgage Insurance policy. As with all claims, we reviewed the application, death certificate, and medical information. The review showed that Tommy visited a doctor in 1993. On the application, Tommy did not indicate this visit occurred. Had we known about the medical condition revealed during that visit, we would not have accepted the application or issued a Certificate of Insurance.

The Home Mortgage Insurance contract you have with us has a provision that allows us to contest the validity of policy information provided by a policy owner within two years of the date the contract was issued. In light of the facts discussed above, we are rescinding Decreasing Term Life Insurance Certificate # 32534 issued to Tommy B. Hall in December of 1998. As a result, no benefits will be paid under this contract, either now or in the future.

In addition, we have forwarded the amount representing the premium that was paid for the insurance coverage since the 11th day of December, 1998 to your account electronically at the credit union along with a copy of this letter.

If you have any questions, please contact me at 1-800-356-2644, extension X7475.

Sincerely,

Brenda Larson
Life Underwriter
Credit Insurance Underwriting

Cc: Patriot Federal Credit Union

bl
X7475/2D-1/
opeiu-39

cc: Mike Stel

18

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v.

Case No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

* * * * *

DEPOSITION OF MICHAEL E. STEL

Thursday, November 1, 2001

11:20 o'clock a.m.

Reported by: LISA A. CREERON

MADISON **F**REELANCE **R**EPORTERS

131 W. Wilson St.

Madison, Wisconsin 53703

(608) 255-8100

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v. Case No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

DEPOSITION OF MICHAEL E. STEL

Thursday, November 1, 2001

11:20 o'clock a.m.

Reported by: LISA A. CREERON

I N D E X

| | | |
|----|---|------|
| 1 | | |
| 2 | Examination by: | Page |
| 3 | Attorney Pedersen | 4 |
| 4 | Attorney Kelley | -- |
| 5 | (There are no exhibits marked for identification) | |
| 6 | ***** | |
| 7 | MICHAEL E. STEL, | |
| 8 | called as a witness, being first duly | |
| 9 | sworn in the above cause, testified | |
| 10 | under oath as follows: | |

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1 DEPOSITION of MICHAEL E. STEL, a
2 witness in the above-entitled matter, taken at the
3 instance of the plaintiff, wherein Nancy Hall is the
4 plaintiff and CUNA Mutual Group, et al., are the
5 defendants, pending in the United States District
6 Court for the Middle District of Pennsylvania,
7 pursuant to notice, before LISA A. CREERON, a
8 Registered Professional Reporter and Notary Public in
9 and for the State of Wisconsin, at Melli, Walker,
10 Pease & Ruhly, Attorneys at Law, 10 East Doty Street,
11 in the City of Madison, County of Dane, and State of
12 Wisconsin, on the 1st day of November, 2001, commencing
13 at 11:20 o'clock a.m.

A P P E A R A N C E S

15 STEPHEN R. PEDERSEN,
16 Attorney at Law, 214 Senate Avenue, Suite 602,
17 Camp Hill, Pennsylvania, appearing on behalf of
18 the plaintiff;

19 MICHAEL R. KELLEY,
20 McNEES, WALLACE & NURICK, Attorneys at Law,
21 100 Pine Street, P. O. Box 1166,
22 Harrisburg, Pennsylvania 17108, appearing
23 on behalf of the defendants.

24 ALSO PRESENT: MARK RICHARDSON

25 (Original transcript is filed with Attorney Pedersen)

1 MR. KELLEY: Steve, for the
2 record, we agree to the usual stipulations with
3 the exception of he'll read and sign the
4 deposition.

5 MR. PEDERSEN: That's fine.
6 Good.

EXAMINATION

7 BY MR. PEDERSEN:
8 Q Please state your full name for the record.
9 A Michael Eric Stel.
10 Q And that's S-T-E-L?
11 A Correct.
12 Q Mr. Stel, where are you currently employed?
13 A CUNA Mutual Group.
14 Q In what capacity are you employed at CUNA Mutual?
15 A My job title is SIU manager.
16 Q What is SIU manager?
17 A Special investigation unit manager.
18 Q What are your job duties as the special investigation
19 unit manager?
20 A I'm responsible for management of the department and
21 activities contained within the department, which
22 would include training of staff regarding fraud and
23 fraud prevention, fraud investigation, compliance
24 with fraud regulations. Those would be the major
25

PAGE 5 SHEET 2

5

1 components. There are other duties.
 2 Q In part of your training duties or supervising of
 3 training duties, do you know specifically whether you
 4 trained Brenda Larson to recognize fraud?
 5 A I have in the past.
 6 Q How long has Brenda Larson been working at CUNA?
 7 A I don't know.
 8 Q Less than three years?
 9 A I don't know.
 10 Q I noted somewhere in the file that she was under
 11 training and being supervised at the end of 1999. Do
 12 you know anything about that, about her length of
 13 time with CUNA?
 14 A No, I don't.
 15 Q What did you do or your staff do with respect to
 16 training Linda?
 17 MR. KELLEY: You mean Brenda.
 18 MR. PEDERSEN: Brenda, I'm
 19 sorry.
 20 Q Brenda Larson.
 21 A Brenda would have sat in on the general training
 22 sessions that we provide to staff.
 23 Q Is there a certification process or requirements that
 24 individuals such as Brenda Larson attend and complete
 25 fraud training?

PAGE 6

6

1 A A certification process? What do you mean by that?
 2 Q What requirements are there for someone in
 3 Brenda Larson's position to be trained to recognize
 4 consumer fraud?
 5 A She would be expected to attend the fraud training
 6 sessions that we provide to staff.
 7 Q How often are fraud training sessions given?
 8 A Typically we have some what we call formal fraud
 9 training sessions that occur twice a year for two
 10 hours each, two two-hour sessions.
 11 Q She would be required to attend those two sessions
 12 per year for two hours each?
 13 A We would ask that she attend those, yes.
 14 Q What other training would she be required to attend?
 15 A That I don't know.
 16 Q Do you know of any informal training that she's had
 17 in recognizing consumer fraud?
 18 A She may receive informal training on her own. She
 19 may receive it through conversations that we may have
 20 had on -- you know, specific case or something like
 21 that. She may ask a question of someone about fraud.
 22 Q How big is the staff that you supervise?
 23 A I don't supervise any staff.
 24 Q Do you train staff?
 25 A (Witness nodding).

PAGE 7

7

1 Q I'm sorry, that was a nodded head.
 2 A I don't know if that was a question.
 3 Q Do you train staff?
 4 A Yes.
 5 Q But they're not considered staff of your department?
 6 A Correct.
 7 Q How large or how many people are in the special
 8 investigations department of CUNA Mutual?
 9 A Currently just myself.
 10 Q In the 2000 time frame, was it also just yourself?
 11 A For a period of time it was just myself. For a
 12 period of time there was someone else as well.
 13 Q Who was the other person?
 14 A Erin Hefty.
 15 Q Do you know how you spell Erin?
 16 A E-R-I-N.
 17 Q It's a female?
 18 A Yes.
 19 Q How do you spell Hefty?
 20 A H-E-F-T-Y.
 21 Q When did Erin Hefty leave CUNA Mutual?
 22 A She still is with CUNA Mutual.
 23 Q Do you know whether or not she's in the Madison area
 24 of CUNA Mutual?
 25 A Yes, she is.

PAGE 8

8

1 Q Still work in your same building?
 2 A Actually I don't think she's in the same building
 3 anymore.
 4 Q Which building is she in?
 5 A I think she's in -- I'm not certain.
 6 Q Which department is she working for?
 7 A I'm not certain of that either.
 8 Q Is there a personnel roster where we would be able to
 9 find the location of Erin Hefty?
 10 A Yes.
 11 Q Who maintains that roster?
 12 A There's a corporate roster that is available that
 13 would show where -- you know, where her desk location
 14 is.
 15 Q Do you know why she left the special investigations
 16 unit?
 17 A Not specifically.
 18 Q Generally why did she leave?
 19 A She decided to take another job.
 20 Q Within CUNA?
 21 A Yes.
 22 Q And you don't know the reasons for that decision?
 23 A Not specifically, no.
 24 Q What's your training and background with respect to
 25 special investigations for an insurance company?

PAGE 9 SHEET 3

9

1 A Well, I've had a lot of different kinds of training
2 over the years. I have my educational background,
3 which applies to a portion of the job, I think.
4 Q Let's break it down then if you want. We'll start
5 with the educational, formal educational training
6 that qualifies you to be responsible for the special
7 investigations unit.
8 A Well, my education includes a bachelor's and master's
9 degree in business administration. My on-the-job
10 training includes various management positions. It
11 also includes a lot of claims background, which
12 exposed me to fraud investigation and investigation
13 of insurance claims and that sort of thing.
14 The first position I held at CUNA Mutual was a
15 field claims examiner, which had a fraud
16 investigation component associated with it, so I
17 received on-the-job training through that position.
18 I've attended various seminars, fraud related
19 seminars where I've received training.
20 Q Do you have any legal training or legal background?
21 A No.
22 Q I'm kind of going back and forth here because things
23 come to mind. With respect to the training of staff,
24 such as Brenda Larson on fraud and the fraud
25 sessions, are they given written material?

PAGE 10

10

1 A Sometimes, yes.
2 Q Who maintains the written material at CUNA Mutual
3 with respect to fraud and fraud investigations?
4 A Well, the special investigation unit puts together
5 any written materials that are included in the
6 training that is provided.
7 Q So do you have copies of or access to the training
8 material for fraud investigation at CUNA Mutual?
9 A I have some written materials that have been provided
10 in training. I'm not certain, you know, to what
11 degree we've kept that information.
12 Q I'll ask it through your counsel in a formal way, but
13 I want to let you know that we will be asking for the
14 materials for training from the '98 through 2000 time
15 period. So don't destroy any of them.
16 MR. KELLEY: Say that again,
17 Steve, so I can make a note of that.
18 MR. PEDERSEN: The '98 through
19 2000 time period, training materials where
20 individuals such as Brenda Larson are trained
21 with respect to consumer fraud.
22 Q Does CUNA Mutual maintain any policies or procedures
23 with respect to the reporting of suspected consumer
24 fraud apart from training materials?
25 A Policies or procedures?

PAGE 11

11

1 Q Yes.
2 A Other than verbal discussion, I would say no.
3 Q You don't have a three-ring binder on your desk that
4 are the policies of CUNA Mutual about forms used, how
5 to report fraud, the steps that you take --
6 A No.
7 Q -- and when you do it?
8 A No.
9 Q That's within your own discretion?
10 A Yes.
11 Q You mentioned that you had a B.A. and a master's
12 degree in business administration. What about your
13 B.A. and your master's degree in business
14 administration that qualified you to be the special
15 investigations unit supervisor?
16 A It's actually a B.S. in business administration. I
17 believe that the reason that I mentioned that is
18 because I think that gave me some business knowledge
19 and background, which does apply to a portion of the
20 job as a special investigation unit manager.
21 Q Would that be more towards the management end of the
22 supervisory and training duties versus recognizing
23 consumer fraud?
24 A Yes.
25 Q As a field claims -- I guess it's an examiner, but a

PAGE 12

12

1 field claims officer at CUNA Mutual, what about that
2 position that qualified you to be the special
3 investigation unit supervisor?
4 A Well, that position required fraud investigation at
5 times, collecting of information, et cetera, various
6 capacities of fraud investigation.
7 Q As a field claims examiner, how many times did you
8 undertake a fraud investigation?
9 MR. KELLEY: Object to the form.
10 You can answer it.
11 A I'm not sure.
12 Q Do you know whether it was more than 10?
13 A Yes.
14 Q Over what period of time were you a field claims
15 examiner?
16 A Approximately March 1988 through January 1989.
17 Q When did you take over the duties as the special
18 investigations unit manager?
19 A Approximately January 1997.
20 Q So you simultaneously held some duties as a special
21 investigations unit manager and a field claims
22 examiner?
23 A No.
24 Q I may have the outline. Can you go through the dates
25 for me of when you held those job duties at CUNA?

PAGE 13 SHEET 4

13

1 A Right. I was a field claims examiner from
2 approximately March 1988 through January 1989. I was
3 then a district claims manager from that point --
4 from 1989, January 1989 through approximately January
5 1997, and from approximately January 1997 to the
6 present I've been an SIU manager.
7 Q Thank you. That clarifies it. What are the types of
8 seminars that you've attended over the last three
9 years to train in your continued training to be a
10 special investigations unit manager?
11 A I've attended conferences focused on insurance fraud.
12 Q What were the last two conferences you attended?
13 A I attended the Wisconsin chapter of the International
14 Association of Special Investigation Unit -- Units
15 conference.
16 Q When was that?
17 A That was in October of this year. And prior to that,
18 I believe the last one I attended was in September of
19 2000, and that was the International Association of
20 Special Investigation Units conference.
21 Q How is it that a file comes onto your desk for your
22 attention as a special investigation unit manager?
23 What's the mechanism within the company?
24 A A mechanism for what specifically?
25 Q For you to be involved in a claim.

PAGE 14

14

1 A It can take a number of different forms. It's
2 typically referred to me by another area. And that
3 can take the form of an electronic message, an
4 e-mail, it could be a telephone call.
5 It could be routing through a claims system a
6 particular case or file for review, could be a copy
7 of a file in interoffice mail. It takes a number of
8 different forms.
9 Q Do you recall specifically with respect to the Hall
10 claim how it was that you became involved?
11 A I'm not certain.
12 Q Do you have any information on your computer or in
13 your office that would help you to recall how it
14 became that you were involved?
15 A It may. I'm not certain.
16 Q If we wanted to find out how it was that you became
17 involved, what steps would we take to do that?
18 A The only step that I'm aware of would be to look at
19 the file and see if you can -- I mean you can make
20 some assumptions based on how it typically works, but
21 to say for certain how it was received, I'm not -- I
22 can't say right now.
23 Q Can you tell me your custom and practice about how it
24 would typically be that you would be investigating a
25 file on a homeowner's policy, home mortgage policy?

PAGE 15

15

1 MR. KELLEY: Object to the form.
2 You can answer if you can, Mike.
3 A Could you ask it again, I'm sorry?
4 Q I can try to. Can you tell me based upon your custom
5 and practice, based upon your routine in the office
6 how it would be typically you would become involved
7 in the investigation of a home mortgage protection
8 policy?
9 A Typically if there's a need for me to be involved, it
10 would be referred to me by someone else.
11 Q Someone in Brenda Larson's position?
12 A Potentially, yes.
13 Q Do you recall at some point apart from the file, do
14 you have a recollection at some point of receiving
15 information on the Hall claim file?
16 A The only reason I recollect it is because I've looked
17 at the file as a result of this deposition.
18 Q When was the last time that you looked at this file,
19 claim file?
20 A Yesterday afternoon, I believe.
21 Q After reviewing the file, now do you have a
22 recollection of having taken some steps on the Hall
23 claim?
24 A Yes.
25 Q You have that recollection independent of the file --

PAGE 16

16

1 I mean now as you sit here, the file refreshed your
2 memory and you can recall what you did on the file?
3 A Well, really I don't recall it other than when I look
4 at the file, I can kind of see some of the steps that
5 I took. Beyond that, I don't recall the file
6 specifically.
7 Q After reviewing the file, can you describe for me the
8 first thing that you remember happening with respect
9 to the Hall claim file?
10 A I don't recall what would have been the first thing.
11 Nothing comes to my mind.
12 Q What I'm trying to do is track chronologically your
13 involvement.
14 A Okay.
15 Q And so if you don't recall the first thing, what's
16 the next thing? What would be the recollection that
17 you have?
18 A Well, the recollection based on my review of the file
19 is that I received a referral.
20 Q And you don't know who that was from?
21 A I believe it was from Brenda Larson, which prompted
22 me to review it on the insurance fraud side of things
23 or with that being my role for the company. That was
24 my focus when I reviewed the file.
25 Q What steps did you undertake in your review of the

PAGE 17 SHEET 5

MICHAEL STEL - 11/01/01 / HALL V. CUNA MUTUAL

17

1 file to determine whether you believed insurance
 2 fraud had been committed?
 3 A Based on my review of the file at this time, it
 4 appears that I would have reviewed the file and the
 5 information contained in it.
 6 Q Do you have any notes, computer information or memos
 7 to anyone to indicate that you in fact reviewed the
 8 entire file?
 9 A None that I'm aware of, no.
 10 Q Do you recall reviewing the entire file?
 11 A No, I don't specifically.
 12 Q Is there information within the file that the
 13 referral in fact came from Brenda Larson?
 14 A I believe there is.
 15 Q Let me show you what's been provided by your attorney
 16 concerning the -- it's labeled under a general
 17 category regarding attorney general's investigation.
 18 MR. KELLEY: Regarding -- oh,
 19 okay. I'm sorry.
 20 Q This is a series of documents, a letter dated
 21 March 29th, 2000 from the attorney general's office
 22 in Pennsylvania to you, another letter dated
 23 February 29th, 2000 from the attorney general's
 24 office to you, a letter from you to Mrs. Hall and an
 25 insurance fraud form submitted to the attorney

PAGE 18

18

1 general's office. I want to ask if this is your
 2 understanding of the totality of your involvement in
 3 this claim.
 4 A I believe it is, yes.
 5 Q And of these documents --
 6 MR. KELLEY: Steve, I'm sorry,
 7 before you do that, can I just take a look at
 8 it?
 9 MR. PEDERSEN: Of course. Sure.
 10 Sorry about that.
 11 Q There's nothing on any of these documents that refers
 12 to Brenda Larson, isn't that correct?
 13 A There is an indication of Brenda Larson on my
 14 February 22nd letter.
 15 Q What is that indication?
 16 A I refer to Brenda Larson's letter in my letter dated
 17 February 22nd.
 18 Q And you indicate that Brenda Larson was the one who
 19 provided information that some things were not
 20 disclosed?
 21 A Well, what the sentence in my February 22nd letter
 22 states is, "As Brenda Larson's February 10, 2000
 23 letter explained, medical information obtained
 24 confirms that Mr. Hall did not disclose some medical
 25 information at the time he completed the application

PAGE 19

19

1 for home mortgage insurance."
 2 Q Did you know at the time what medical information
 3 that was that he didn't disclose allegedly?
 4 A I have reviewed the file, so I was familiar with it,
 5 yes.
 6 Q Do you recall as you sit here today what that review
 7 revealed?
 8 A In general terms.
 9 Q What did that review reveal?
 10 A To the best of my recollection, it revealed that
 11 there were certain medical conditions that were not
 12 disclosed on the application at the time Mr. Hall
 13 completed the application for insurance.
 14 Q What conditions were those?
 15 A The condition I'm thinking of is his cancer
 16 condition.
 17 Q Any others?
 18 A Not that I recall right now, no.
 19 Q Was it your understanding that Mr. Hall had known he
 20 had cancer and didn't disclose it on a claim
 21 application?
 22 A I wouldn't say that, no.
 23 Q What was your understanding with respect to
 24 Mr. Hall's insurance application and the disclosing
 25 of cancer?

PAGE 20

20

1 A The questions that he answered on the insurance
 2 application did not appear to be completely accurate
 3 as a result of the medical records that were
 4 contained in the file.
 5 Q As an insurance fraud investigator, what's your
 6 understanding of the definition of fraud?
 7 MR. KELLEY: Object to the form.
 8 You can answer. Calls for a legal conclusion.
 9 Answer.
 10 Q I'm asking for your understanding of the time you
 11 reported consumer fraud.
 12 MR. KELLEY: Well, objection.
 13 He didn't report consumer fraud. You haven't
 14 established that. But go ahead, you can answer,
 15 Mike.
 16 A Let me see. Specific definition is escaping me right
 17 now, but in general terms it would be an act to in
 18 this case potentially deceive an insurance company.
 19 Q What information did you have that Mr. Hall had
 20 potentially deceived an insurance company?
 21 A The documents contained in the claim file -- in the
 22 file that I reviewed.
 23 Q And what information was that?
 24 A As I said earlier, it appeared that the answers --
 25 the answers that Mr. Hall provided on the insurance

PAGE 21 SHEET 6

21

1 application may not have been completely accurate
 2 based on the documents contained in the file.
 3 Q And as you sit here today, you don't recall
 4 specifically what any of that was, what the
 5 disclosure was, what the medical findings were?
 6 A Not in specific terms.
 7 Q You don't know as you sit here today whether or not a
 8 pathology report following the removal of a mole
 9 indicated there was no cancer? Do you know anything
 10 about that?
 11 A I did yesterday in preparation for this deposition
 12 did review that, yes.
 13 Q Had you reviewed that at the time that you wrote
 14 these or were involved in these five letters?
 15 A I don't recall specifically, you know, each document
 16 that I reviewed anymore. It was a long time ago.
 17 However, in general terms when I receive a referral,
 18 I'll review the file that is presented to me. So I'm
 19 reaching the conclusion that I likely did, but I
 20 don't recall doing it.
 21 Q What medical training do you have?
 22 A Other than general training through my work at CUNA
 23 Mutual, I don't have any specific.
 24 Q Do you know what a dysplastic nevus is?
 25 A No.

PAGE 22

22

1 Q Do you know how a dysplastic nevus relates to cancer
 2 or malignant findings?
 3 A No.
 4 Q Do you know the signs and indications of a melanoma?
 5 A Other than things that you hear about through media
 6 in -- to be aware of for yourself or your own
 7 individual health, no.
 8 Q Do you know what melanocytic cells are?
 9 A No.
 10 Q Do you know the significance of those with respect to
 11 findings of cancer or not cancer?
 12 A No.
 13 Q Are you qualified to review a pathology report?
 14 A No.
 15 Q Are you qualified to review specific medical findings
 16 using medical terminology and medical records?
 17 A Depends upon the purpose.
 18 Q The purpose -- if the purpose is to determine whether
 19 or not a mole that has been removed was a dysplastic
 20 nevus versus melanoma.
 21 A No.
 22 Q What's the first step that we have documents of that
 23 you took after you reviewed Mr. Hall's records?
 24 A Based on the documentation that I have, I believe
 25 that I completed an insurance -- it's a Pennsylvania

PAGE 23

23

1 form that they require be completed.
 2 Q Who is they?
 3 A They being the State of Pennsylvania.
 4 Q Where did you obtain that form?
 5 A The form is contained in my department.
 6 Q In some sort of three-ring binder?
 7 A Yes.
 8 Q Do you have claim forms to report fraud for every
 9 state?
 10 A I have -- not every state, no.
 11 Q What else is contained in that binder?
 12 A The binder contains mostly -- I think for the most
 13 part it's referral forms, information from state
 14 insurance departments regarding insurance fraud, some
 15 regulations regarding insurance fraud.
 16 Q Did you know whether or not at the time you made this
 17 or filled out this insurance fraud form whether
 18 Mr. Hall's treating doctor, Dr. Hurley's records had
 19 been reviewed by CUNA Mutual?
 20 A I don't know if I -- I can't say if I knew that or
 21 not. I don't recall.
 22 Q Were you the one who actually filled out all the
 23 information on the insurance fraud form that was sent
 24 to the Pennsylvania Attorney General's Office?
 25 A Yes.

PAGE 24

24

1 Q You typed that on a typewriter?
 2 A I believe I did, yes.
 3 Q What information did you provide with respect to the
 4 allegations of fraud?
 5 A I completed the form.
 6 MR. KELLEY: Do you want him to
 7 read that, is that what you're getting at?
 8 MR. PEDERSEN: Sure.
 9 Q From the part that you filled out, which part
 10 specifically relates to the allegations of fraud?
 11 A Well, what I do is I follow the form that the state
 12 asks me to complete, and I complete those sections
 13 that apply. And one of the sections is No. 8, VIII,
 14 and I provided a brief summary there of what I found
 15 with the referral.
 16 Q Just for the record, can you tell us what that
 17 summary was that was the basis for your referral?
 18 A You want me to read this?
 19 Q If that's what is most helpful, then tell me what
 20 that summary says.
 21 A What it says on the form is, "Mr. Hall applied for
 22 home mortgage protection insurance on 11-18-99. The
 23 application contains medical history questions. At
 24 the time Mr. Hall's claim was filed, following his
 25 death, additional medical information was requested.

1 The additional medical information confirmed Mr. Hall
2 had not disclosed all of his medical history and did
3 not answer a medical history question on the
4 application correctly. Based on the additional
5 information obtained, Mr. Hall's insurance was
6 rescinded and no benefits were paid."

7 Q Now, as you sit here today and after -- with all the
8 information that you have, what was the history that
9 Mr. Hall did not provide truthfully?

10 A Again what I'm referring to there is the question --
11 one of the questions contained on the insurance
12 application as compared to the medical records and
13 what they presented.

14 Q And the question on the application was which one?

15 A I'd have to look at the application. I don't recall.

16 Q Which was the last time you reviewed the claim file?

17 A Yes.

18 Q Here's the application. I'm showing you a copy of
19 the application. Which part of that application was
20 fraudulent in your mind?

21 MR. KELLEY: Object to the form
22 of the question.

23 A I'm not comfortable with that question either because
24 I didn't arrive at the fact that it was fraudulent
25 necessarily. What I was doing was making a referral

1 need to refer to in order to get in compliance for
2 CUNA Mutual Group.

3 Q Is it your testimony you would have referred to the
4 reference manual, but you don't recall it today?

5 A Don't recall what?

6 Q What the reference manual provides with respect to
7 the reporting of something that you don't necessarily
8 believe is fraud to the fraud section of the attorney
9 general's office.

10 A Well, I don't think that the reference manual says
11 anything about whether I believe it's fraud or not,
12 so I want to make that distinction from your
13 question. But I have knowledge in doing my job that
14 Pennsylvania has a form that I need to fill out if
15 the evidence in the file leads me to believe that
16 there's a suspicion or that insurance fraud is
17 suspected, and that's what I believe I did in this
18 case.

19 MR. KELLEY: Can I interject
20 something here? Yesterday when I was meeting
21 with Mr. Stel, he provided me with additional
22 information that I didn't have in my file and
23 had him make a copy of it that I believe relates
24 to this series of questions that you're asking.
25 I want to give you a copy of that.

1 as required by the State of Pennsylvania due to the
2 documents contained in the file I reviewed.

3 Q So you didn't form an opinion, your own opinion that
4 fraud had been committed?

5 A Not necessarily.

6 Q Did you conduct any investigation, independent
7 investigation besides the review of the file to
8 determine whether fraud had been committed?

9 A Not that I recall, no.

10 Q What Pennsylvania law that you're aware of required
11 you to submit this form?

12 A I'm not sure of the exact title of the Pennsylvania
13 law.

14 Q Without reference to the specific title, what's the
15 provision that requires you to report something that
16 you yourself don't necessarily believe is insurance
17 fraud?

18 MR. KELLEY: Object to the form
19 of the question.

20 A I'm not necessarily comfortable with that question
21 either. What I will say is that I have the reference
22 manual that I mentioned earlier that contains the
23 referral forms that I use. Some of the state
24 regulations and statutes, et cetera, is what I would
25 refer to in order to understand what I do or do not

1 I apologize for not getting to that
2 sooner. I forgot about it until you got into
3 this area. If you want to take a couple minutes
4 to take a look at that, Steve, that's fine.

5 Q Some documents have just been produced right now,
6 Mr. Stel. Are you aware of the source of these
7 documents? Where do they come from?

8 A They came from the three-ring binder that I was --
9 that I referenced earlier.

10 Q Is the three-ring binder divided by tabs by state?

11 A Yes.

12 Q Is this everything that's contained within the
13 Pennsylvania section of your three-ring binder?

14 A Yes.

15 Q And do you believe you would have reviewed this
16 material from the three-ring binder, at least those
17 things which date appropriately from the time of your
18 letter to the attorney general's office before
19 sending the letter to the attorney general's office?

20 A I may not have reviewed it specifically before I
21 referred it, but I certainly had knowledge of what it
22 says.

23 Q I would like to make clear, because I'm not clear
24 based upon some of the answers, did you believe as
25 the special investigations unit manager that a fraud

PAGE 29 SHEET 8

29

1 had been committed on CUNA Mutual at the time you
 2 submitted the fraud section form?
 3 A I suspected that it may have.
 4 Q Suspected that it may have. In your mind a suspicion
 5 that a fraud may have been committed, is that the
 6 standard that warrants submitting the form that you
 7 submitted?
 8 A I would say that it did in this case, yes.
 9 Q And that's the standard that you apply?
 10 A Oftentimes, yes.
 11 Q The form that was filled out by you, you sent that to
 12 the attorney general's office in Pennsylvania, didn't
 13 you?
 14 A Yes. I sent it to the address contained on the top
 15 of the form.
 16 Q After sending that form to the attorney general's
 17 office, what else did you do?
 18 A The only other thing that I can think of is I would
 19 have made a copy of that and added it to our file for
 20 our records. But beyond that, I don't recall doing
 21 anything else.
 22 Q Well, let's go through the documents. What next do
 23 you recall happening? Did you send a letter to
 24 Mrs. Hall?
 25 A Yes.

PAGE 30

30

1 Q What did you tell Mrs. Hall about informing the
 2 attorney general's office of a potential fraud claim?
 3 A I could read the letter if that would answer your
 4 question correctly.
 5 Q You can read it or paraphrase it.
 6 A Okay. My letter is dated February 22nd, 2000,
 7 indicates, "Dear Ms. Hall: Mr. Hall's home mortgage
 8 protection insurance claim was referred to me for
 9 review. You have my sincere condolences on your
 10 loss.
 11 As Brenda Larson's February 10, 2000 letter
 12 explained, medical information obtained confirms that
 13 Mr. Hall did not disclose some medical information at
 14 the time he completed the application for home
 15 mortgage insurance. Accurate completion of medical
 16 history is important to the underwriting process
 17 involved with an insurance application. Due to the
 18 nature of this, we are required to inform the
 19 Pennsylvania insurance fraud section of this matter.
 20 If you have any questions or concerns regarding
 21 this matter, please contact me directly. Thank you."
 22 Q Now, it was your contention that it was Mr. Hall who
 23 didn't provide accurate information, isn't that
 24 correct?
 25 A Yes.

PAGE 31

31

1 Q Because there were two individuals listed on the
 2 form, application form, and it was Mr. Hall you were
 3 concerned with?
 4 A That was my focus, yes.
 5 Q And you knew at the time that Mr. Hall had died,
 6 isn't that right?
 7 A Yes.
 8 Q And you had referred the matter to the criminal
 9 investigation fraud section of the Pennsylvania
 10 Attorney General's Office, is that right?
 11 A I referred it to the address contained on the top of
 12 their referral form.
 13 Q And isn't that what it is?
 14 A It's the -- it says Office of the Attorney General,
 15 Insurance Fraud Section.
 16 Q Do you have any knowledge as to whether or not an
 17 attorney general's office will investigate a dead
 18 person for fraud?
 19 A I'm not certain, no.
 20 Q Do you have any information about whether
 21 investigations for fraud take place upon dead people?
 22 A I can say that I know life insurance claims are often
 23 investigated involving insurance, potential insurance
 24 fraud.
 25 Q But in this specific case the assertion was that

PAGE 32

32

1 Mr. Hall was not truthful and accurate, isn't that
 2 correct?
 3 A Well, my letter speaks for itself.
 4 Q Is that what it says, it was Mr. Hall who had not
 5 provided accurate information?
 6 A That's correct.
 7 Q And Mr. Hall was dead?
 8 A That's correct.
 9 Q Is the reason that you sent this letter to the
 10 attorney general's office to bolster the claim file
 11 to explain why insurance premiums weren't -- or
 12 benefits weren't being paid?
 13 A No.
 14 Q Did you expect an investigation to take place on the
 15 deceased?
 16 A By whom?
 17 Q By the attorney general's office.
 18 A Not necessarily, no.
 19 Q You indicate in your letter that you're required to
 20 inform the Pennsylvania insurance fraud section.
 21 Where are those requirements stated?
 22 A That's based on my knowledge of the information
 23 typically that's contained in the three-ring binder
 24 that I referred to earlier that has been produced
 25 here and through training I've received in the

PAGE 33 SHEET 9

33

1 department since starting.

2 Q I just want to clarify, you've provided certain

3 information from your three-ring binder on

4 Pennsylvania, is that right?

5 A Yes.

6 Q And you believe contained within this document is the

7 requirement that you report Mr. Hall to the attorney

8 general fraud section?

9 A That is the material that I would reference that

10 would help me lead to that conclusion.

11 Q And that's in fact what you told Mrs. Hall, that you

12 were required to inform the fraud section, right?

13 A Correct.

14 Q Did you get a result, anything back from the attorney

15 general's office?

16 A Yes.

17 Q What did you receive?

18 A I received two letters.

19 Q What's the first one?

20 A It's dated February 29th, 2000.

21 Q And in that letter they in essence thank you for your

22 referral?

23 A That's correct.

24 Q Substantively that's the substance of the letter,

25 isn't it?

PAGE 34

34

1 A Correct.

2 Q What's the second letter that you received?

3 A It's dated March 29, 2000.

4 Q One month later?

5 A Yes.

6 Q What does that letter tell you in substance?

7 A Basically that they are not going to be pursuing the

8 matter any further.

9 Q Did you ever send Mrs. Hall, the surviving widow, a

10 copy of the attorney general's letter that they

11 weren't going to investigate her or her husband?

12 A No, I did not.

13 Q Do you have any information or any knowledge about

14 Mrs. -- whether Mrs. Hall for more than a year sat

15 wondering whether she was under investigation because

16 of your first letter?

17 A No.

18 Q And you didn't send that letter to Mrs. Hall to

19 frighten her from pursuing a claim?

20 A No.

21 Q Did you send to the attorney general's office your

22 claim file that included medical records?

23 A No, I don't believe I did.

24 Q You would have just sent the form?

25 A Yes.

PAGE 35

35

1 Q Did they ask for any additional records or any

2 information from you?

3 A No.

4 Q They made an assessment without that?

5 A Correct.

6 Q Do you have any records anywhere to tell us any of

7 the other times that you've reported potential

8 consumer fraud to the Pennsylvania Attorney General's

9 Office? Do you keep statistics, records?

10 MR. KELLEY: About suspected?

11 Q That's the standard that you used when you refer to

12 the attorney general's office?

13 A I did have some records that would indicate other

14 referrals that have been made to Pennsylvania.

15 Q Where are those records maintained, in your office?

16 A Yes, we have -- yeah, yes.

17 Q Do you keep the same kind of records nationwide for

18 all the referrals you make to various attorney

19 general's offices when you have a suspicion of fraud?

20 A Could you ask that again, I'm sorry?

21 Q Besides Pennsylvania, do you keep records from other

22 states about when you send in a document such as the

23 one you sent in the Hall case?

24 A Yes.

25 Q You keep that statistically?

PAGE 36

36

1 A We keep record of it, yes.

2 Q And do you keep records that tell us based on the

3 number of referrals how many are investigated and how

4 many come back with a positive or negative

5 investigation result?

6 A No.

7 Q Do you keep files that would tell us -- that we could

8 statistically look at to determine how often when you

9 send something, it comes back with a positive

10 investigation or fraud is prosecuted?

11 A It would require reviewing the files involved.

12 Q I'll ask that you maintain those files also as

13 they're going to be part of this case.

14 MR. PEDERSEN: And at the

15 appropriate time we'll be requesting copies.

16 Objections can be made to producing those.

17 MR. KELLEY: Well, I'll just put

18 on the record that, you know, they're not

19 necessarily going to be part of this case, that

20 we may or may not object to a specific request

21 after we receive it.

22 MR. PEDERSEN: Sure.

23 Q After you received the letter back from the attorney

24 general's office, one month after the form was sent

25 to them, the letter telling you that they weren't

1 going to pursue any investigation of fraud, what did
2 you do internally within CUNA Mutual?

3 A The only thing I would have done is added it to the
4 file for our documentation.

5 Q You don't -- who do you report to?

6 A I report to Reed Koenig.

7 Q Who is Reed Koenig?

8 A He's a vice president.

9 Q How do you spell Koenig?

10 A K-O-E-N-I-G.

11 Q Do you report to Reed Koenig concerning statistically
12 how many times you report suspicions of fraud and how
13 many times there are actual investigations?

14 A No.

15 Q Have you ever had any consumer complaints or attorney
16 complaints against CUNA Mutual for the way that you
17 have reported to consumer fraud sections of attorney
18 general's offices?

19 A No.

20 MR. KELLEY: Objection, but he
21 already --

22 MR. PEDERSEN: With the answer,
23 you're okay.

24 Q So this is the first time that assertion's ever come
25 up in your career with CUNA Mutual?

1 A It's the first time I've ever been questioned on it,
2 yes. That I recall anyway.

3 Q The letters that you sent to Mrs. Hall concerning the
4 referral to the fraud section -- actually just the
5 one letter, is that a standard type of letter that
6 you send every time you send an attorney general's
7 form?

8 A You're going to have to ask it again, I'm sorry.

9 Q I'll speak more slowly also. The letter you sent to
10 Mrs. Hall, the format, is that a standard format and
11 letter that you send to a potential insured or to an
12 insured when their file has been sent to an attorney
13 general's office for investigation?

14 MR. KELLEY: Object to the form.
15 You can answer it.

16 A Yeah, it's pretty close. I mean they can vary a
17 little bit, but it's a good example of the typical
18 letter, yes.

19 Q Besides the requirements of the Pennsylvania Attorney
20 General's Office, what's the standard within CUNA
21 Mutual for referring a matter to an attorney general
22 for fraud investigation?

23 A Can you ask it again, I'm sorry?

24 Q I'm not referring to the Pennsylvania standard. I'm
25 referring to the CUNA Mutual standard. Under CUNA

1 Mutual's customs, practices and standards that you're
2 aware of, what's the standard to refer a matter to a
3 fraud section of an attorney general's office?

4 MR. KELLEY: Object to the form
5 of the question. Assumes that all laws from all
6 the states in which CUNA does business have
7 similar requirements on the books and have
8 similar statutes, and I believe he's testified
9 previously that they would look at each case,
10 depending upon which state it came from, as to
11 whether or not follow-up was appropriate.
12 Objection, you can answer.

13 Q Let me clarify if the question is simply what do the
14 states require us to do, whatever your policy is,
15 does CUNA have any policies, customs, practices with
16 respect to referrals generally to attorney general's
17 offices?

18 A I can't say if there are any specific procedures or
19 policies related to that.

20 Q Do you know how many referrals are made under
21 homeowner's protection policies per year?

22 A Referrals?

23 Q Referrals to attorney general's offices in the
24 country.

25 A I couldn't say for sure, no.

1 Q More than a hundred?

2 A I would think no.

3 Q More than 50?

4 A I'm not sure.

5 Q Can you give me a range? You're the one who does the
6 referrals, right?

7 A Right, but I'm really not sure.

8 MR. KELLEY: Wait. Objection.
9 Asked, he answered the question.

10 Q Your office, however, contains that information
11 statistically on how high --

12 A It could be identified.

13 MR. PEDERSEN: Okay. It's
14 another area of request that we'll make at an
15 appropriate time to identify how many monthly,
16 yearly go out nationwide and the responses.

17 MR. KELLEY: Again we'll either
18 respond or not respond to that when an
19 appropriate request is made.

20 Q Can you show me where in the documents that were
21 taken out of your three-ring binder Pennsylvania
22 requires you to report a case such as the Hall case
23 to them on their form?

24 A I can refer probably a number of documents.

25 Q In this set?

MICHAEL STEL - 11/01/01 / HALL V. CUNA MUTUAL GROUP

PAGE 41 SHEET 11

41

- 1 A Yes.
- 2 Q Okay. Go ahead. Let's go through it.
- 3 A I'm looking at one, this is a copy of an electronic
4 memo dated 10-11-2001, and there's a paragraph on
5 this document indicating -- it's a bulletin from the
6 State of Pennsylvania to CUNA Mutual Group. I
7 believe that it was sent. I don't know, it was
8 probably sent to a lot of insurance companies, but we
9 received it.
- 10 It states, "The Pennsylvania insurance
11 department has issued a bulletin to revise and remind
12 insurers of their obligations under Pennsylvania law
13 in the reporting of a suspected insurance fraud.
14 Pennsylvania law explicitly requires insurer
15 reporting of suspected insurance fraud to a law
16 enforcement agency for consideration of criminal
17 investigation and prosecution. Pennsylvania law
18 provides immunity to encourage and protect persons in
19 that reporting. Accordingly, the department has
20 released the following guidance to ensure seeking to
21 meet their statutory obligation for reporting
22 suspected insurance fraud." And this goes on for a
23 while.
- 24 Q And isn't one of those --
- 25 A That would be one of the documents.

PAGE 42

42

- 1 Q I'm sorry. Doesn't that same document tell us that
2 it's the insurer who has the burden of first
3 determining that there's a reasonable basis to
4 believe that insurance fraud has been committed?
- 5 A Yes, it does.
- 6 Q Not a suspicion, a reasonable basis to believe
7 insurance fraud has been committed?
- 8 A Well, I can state for you what it states. It says,
9 "Each insurer has the burden of determining through
10 their investigation when a reasonable basis exists to
11 believe that insurance fraud has occurred, is
12 occurring or is to occur."
- 13 Q And did you believe you had such a basis in the Hall
14 case, a reasonable basis that fraud had occurred?
- 15 A I --
- 16 MR. KELLEY: A reasonable basis
17 to believe that insurance fraud has occurred, is
18 occurring or is to occur?
- 19 MR. PEDERSEN: Right.
- 20 Q Did you have that basis?
- 21 A I had -- I believe that I had sufficient evidence --
22 well, I had and my review of the file led me to
23 believe that there was sufficient evidence to suspect
24 that insurance fraud may have occurred. That's what
25 prompted me to decide that I needed to refer that to

PAGE 43

43

- 1 Pennsylvania.
- 2 Q It doesn't say may have occurred, does it? It says
3 has occurred or is occurring or is about to occur?
- 4 A I'm telling you, though, what I did versus what it
5 says.
- 6 MR. KELLEY: Just note my
7 objection for the record. It says up here -- we
8 can read this like lawyers now, but it says in
9 here, "Pennsylvania law explicitly requires
10 insurer reporting of suspected insurance fraud."
11 He's answered your question.
- 12 Q And you knew of the 1993 pathology report --
- 13 MR. KELLEY: Asked and answered.
- 14 Objection.
- 15 Q -- stating dysplastic nevus?
- 16 MR. KELLEY: Asked and answered.
- 17 Objection.
- 18 Q And you don't know what that is?
- 19 MR. KELLEY: Asked and answered.
- 20 Objection.
- 21 MR. PEDERSEN: I don't have any
22 other questions.
- 23 MR. KELLEY: Hold on. I don't
24 have anything. That's fine. No questions.
- 25 (12:15 p.m.)

PAGE 44

44

- 1 STATE OF WISCONSIN }
2 COUNTY OF DANE } ss
- 3 I, LISA A. CREERON, a Notary Public in and for
4 the State of Wisconsin, do hereby certify that the
5 above deposition was taken before me on the 1st
6 day of November, 2001, commencing at 11:20 a.m., at
7 Melli, Walker, Pease & Ruhly, 10 East Doty Street, in
8 the City of Madison, in said County and State, that it
9 was taken at the request of the plaintiff, upon verbal
10 interrogatories, that it was taken in shorthand by me, a
11 competent court reporter and disinterested person,
12 approved by all parties in interest, and thereafter
13 reduced to typewriting by me; that the said deposition is
14 a true record of the deponent's testimony; that the said
15 deposition is to be used in the above-entitled action now
16 pending in Federal Court; that the deposition was taken
17 pursuant to notice; that the said MICHAEL E. STEL,
18 before examination, was sworn by me to testify the truth,
19 the whole truth, and nothing but the truth relative to
20 said cause. Dated at Madison, Wisconsin, this 5th day of
21 November, 2001.

NOTARY PUBLIC, STATE OF WISCONSIN
REGISTERED PROFESSIONAL REPORTER

MICHAEL STEL - 11/01/01 / HALL V. CUNA MUTUAL

&
 & 2:10,18 44:7
 ,
 '98 10:14,18
 *
 * 3:6,6,6,6
1
 10 2:10 12:12 18:22 30:11 44:7
 10-11-2001 41:4
 11-18-99 24:22
 11:20 2:13 44:6
 12:15 43:25
 17108 2:19
 1988 12:16 13:2
 1989 12:16 13:2,4,4
 1993 43:12
 1997 12:19 13:5,5
 1999 5:11
 1st 2:12 44:5
2
 2000 7:10 10:14,19 13:19 17:21,
 23 18:22 30:6,11 33:20 34:3
 2001 2:12 44:6,21
 22nd 18:14,17,21 30:6
 29 34:3
 29th 17:21,23 33:20
4
 4 3:3
5
 50 40:3
 5th 44:20
8
 8 24:13
A
 a.m 2:13 44:6
 able 8:8
 about 5:12,12 6:21 11:4,12 12:1
 14:23 18:10 21:10 22:5 27:11 28:2
 30:1 31:20 34:13 35:10,22 43:3
 above 3:9 44:5
 above-entitled 2:2 44:15
 access 10:7
 Accordingly 41:19
 accurate 20:2 21:1 30:15,23 32:1,
 5
 act 20:17
 action 44:15
 activities 4:22
 actual 37:13
 Actually 8:2 11:16 23:22 38:4
 added 29:19 37:3
 additional 24:25 25:1,4 27:21 35:
 1
 address 29:14 31:11
 administration 9:9 11:12,14,16
 After 15:21 16:7 22:23 25:7 29:16
 36:21,23,24
 afternoon 15:20
 again 10:16 15:3 25:10 35:20 38:
 8,23 40:17
 against 37:16
 agency 41:16
 ago 21:16
 agree 4:2
 ahead 20:14 41:2
 al 2:4
 allegations 24:4,10
 allegedly 19:3
 already 37:21
 another 8:19 14:2 17:22 40:14
 answer 12:10 15:2 20:8,9,14 25:3
 30:3 37:22 38:15 39:12
 answered 20:1 40:9 43:11,13,16,
 19
 answers 20:24,25 28:24
 anymore 8:3 21:16
 anyone 17:7
 anything 5:12 21:9 27:11 29:21
 33:14 43:24
 anyway 38:2

anywhere 35:6
 apart 10:24 15:13
 apologize 28:1
 appear 20:2
 appeared 20:24
 appearing 2:16,19
 appears 17:4
 application 18:25 19:12,13,21,24
 20:2 21:1 24:23 25:4,12,14,15,18,
 19,19 30:14,17 31:2
 applied 24:21
 applies 9:3
 apply 11:19 24:13 29:9
 appropriate 36:15 39:11 40:15,19
 appropriately 28:17
 approved 44:12
 Approximately 12:16,19 13:2,4,5
 area 7:23 14:2 28:3 40:14
 arrive 25:24
 ask 6:13,21 10:12 15:3 18:1 35:1,
 20 36:12 38:8,23
 Asked 40:9 43:13,16,19
 asking 10:13 20:10 27:24
 asks 24:12
 assertion 31:25
 assertion's 37:24
 assessment 35:4
 associated 9:16
 Association 13:14,19
 Assumes 39:5
 assumptions 14:20
 attend 5:24 6:5,11,13,14
 attended 9:18 13:8,11,12,13,18
 attention 13:22
 Attorney 3:3,4 17:15,17,21,23,25
 23:24 27:8 28:18,19 29:12,16 30:2
 31:10,14,17 32:10,17 33:7,14 34:
 10,21 35:8,12,18 36:23 37:15,17
 38:6,12,19,21 39:3,16,23
 Attorneys 2:10,18
 available 8:12
 aware 14:18 17:9 22:6 26:10 28:6
 39:2

B

B.A 11:11,13
 B.S 11:16
 bachelor's 9:8
 back 9:22 33:14 36:4,9,23
 background 8:24 9:2,11,20 11:19
 based 14:20 15:4,5 16:18 17:3 21:
 2 22:24 25:4 28:24 32:22 36:2
 Basically 34:7
 basis 24:17 42:3,6,10,13,14,16,20
 became 14:10,14,16
 because 9:22 11:18 15:16 25:23
 28:23 31:1 34:15
 become 15:6
 before 2:7 18:7 28:18,20 44:5,18
 behalf 2:16
 believe 11:17 13:18 15:20 16:21
 17:14 18:4 22:24 24:2 26:16 27:8,
 11,15,17,23 28:15,24 33:6 34:23
 39:8 41:7 42:4,6,11,13,17,21,23
 believed 17:1
 benefits 25:6 32:12
 besides 26:7 35:21 38:19
 best 19:10
 Beyond 16:5 29:20
 big 6:22
 binder 11:3 23:6,11,12 28:8,10,
 13,16 32:23 33:3 40:21
 bit 38:17
 bolster 32:10
 books 39:7
 break 9:4
 Brenda 5:4,6,17,18,20,21,24 6:3
 9:24 10:20 15:11 16:21 17:13 18:
 12,13,16,18,22 30:11
 brief 24:14
 building 8:1,2,4
 bulletin 41:5,11
 burden 42:2,9
 business 9:9 11:12,13,16,18 39:6

C

call 6:8 14:4
 called 3:8
 Calls 20:8
 came 17:13 28:8 39:10
 Camp 2:16
 can 10:17 12:10,24 14:1,3,19,19,

23 15:2,2,4,4 16:2,4,7 18:7 20:8,14
 24:16 27:19 29:18 30:5 31:22 36:
 16 38:15,16,23 39:12 40:5,20,24
 42:8 43:8
 can't 14:22 23:20 39:18
 cancer 19:15,20,25 21:9 22:1,11,
 11
 capacities 12:6
 capacity 4:15
 career 37:25
 case 6:20 14:6 20:18 27:18 29:8
 31:25 35:23 36:13,19 39:9 40:22,
 22 42:14
 category 17:17
 cause 3:9 44:20
 cells 22:8
 certain 8:5,7 10:10 14:11,15,21
 19:11 31:19 33:2
 certainly 28:21
 certification 5:23 6:1
 certify 44:4
 cetera 12:5 26:24
 chapter 13:13
 chronologically 16:12
 City 2:11 44:8
 claim 13:25 14:10 15:15,19,23 16:
 9 18:3 19:20 20:21 23:8 24:24 25:
 16 30:2,8 32:10 34:19,22
 claims 9:11,13,15 11:25 12:1,7,
 14,21 13:1,3 14:5 31:22
 clarifies 13:7
 clarify 33:2 39:13
 clear 28:23,23
 close 38:16
 collecting 12:5
 come 9:23 28:7 36:4 37:24
 comes 13:21 16:11 36:9
 comfortable 25:23 26:20
 commencing 2:12 44:6
 committed 17:2 26:4,8 29:1,5 42:
 4,7
 companies 41:8
 company 8:25 13:23 16:23 20:18,
 20
 compared 25:12
 competent 44:11
 complaints 37:15,16
 complete 5:24 24:12,12
 completed 18:25 19:13 22:25 23:
 1 24:5 30:14
 completely 20:2 21:1
 completion 30:15
 compliance 4:24 27:1
 component 9:16
 components 5:1
 computer 14:12 17:6
 concerned 31:3
 concerning 17:16 37:11 38:3
 concerns 30:20
 conclusion 20:8 21:19 33:10
 condition 19:15,16
 conditions 19:11,14
 condolences 30:9
 conduct 26:6
 conference 13:15,20
 conferences 13:11,12
 confirmed 25:1
 confirms 18:24 30:12
 consideration 41:16
 considered 7:5
 consumer 6:4,17 10:21,23 11:23
 20:11,13 35:8 37:15,17
 contact 30:21
 contained 4:22 17:5 20:4,21 21:2
 23:5,11 25:11 26:2 28:12 29:14
 31:11 32:23 33:6
 contains 23:12 24:23 26:22 40:10
 contention 30:22
 continued 13:9
 conversations 6:19
 copies 10:7 36:15
 copy 14:6 25:18 27:23,25 29:19
 34:10 41:3
 corporate 8:12
 Correct 4:12 7:6 18:12 30:24 32:
 2,6,8 33:13,23 34:1 35:5
 correctly 25:4 30:4
 couldn't 39:25
 counsel 10:12
 country 39:24
 County 2:11 44:2,8
 couple 28:3
 course 18:9

Court 2:6 44:11,16
 CREERON 2:7 44:3
 criminal 31:8 41:16
 CUNA 2:4 4:14,15 5:6,13 7:8,21,
 22,24 8:20 9:14 10:2,8,22 11:4 12:
 1,25 21:22 23:19 27:2 29:1 37:2,
 16,25 38:20,25,25 39:6,15 41:6
 currently 4:13 7:9
 custom 14:23 15:4
 customs 39:1,15

D

Dane 2:11 44:2
 date 28:17
 dated 17:20,22 18:16 30:6 33:20
 34:3 41:4 44:20
 dates 12:24
 day 2:12 44:6,20
 dead 31:17,21 32:7
 Dear 30:7
 death 24:25
 deceased 32:15
 deceive 20:18
 deceived 20:20
 decide 42:25
 decided 8:19
 decision 8:22
 defendants 2:5
 definition 20:6,16
 degree 9:9 10:11 11:12,13
 department 4:21,22 7:5,8 8:6 23:
 5 33:1 41:11,19
 departments 23:14
 depending 39:10
 Depends 22:17
 deponent's 44:14
 DEPOSITION 2:1 4:4 15:17 21:11
 44:5,13,15,16
 describe 16:7
 desk 8:13 11:3 13:21
 destroy 10:15
 determine 17:1 22:18 26:8 36:8
 determining 42:3,9
 didn't 19:3,20 20:13 25:24 26:3
 27:22 29:12 30:23 34:18
 died 31:5
 different 9:1 14:1,8
 directly 30:21
 disclose 18:24 19:3,20 30:13
 disclosed 18:20 19:12 25:2
 disclosing 19:24
 disclosure 21:5
 discretion 11:9
 discussion 11:2
 disinterested 44:11
 distinction 27:12
 District 2:5,6 13:3
 divided 28:10
 doctor 23:18
 document 21:15 33:6 35:22 41:5
 42:1
 documentation 22:24 37:4
 documents 17:20 18:5,11 20:21
 21:2 22:22 26:2 28:5,7 29:22 40:
 20,24 41:25
 Does 10:22 11:19 34:6 39:6,15
 40:5 42:5 43:2
 Doesn't 42:1 43:2
 doing 21:20 25:25 27:13 29:20
 done 37:3
 Doty 2:10 44:7
 down 9:4
 due 26:1 30:17
 duly 3:8
 duties 4:19 5:1,2,3 11:22 12:17,
 20,25
 dysplastic 21:24 22:1,19 43:15
E
 e-mail 14:4
 E-R-I-N 7:16
 each 6:10,12 21:15 39:9 42:9
 earlier 20:24 26:22 28:9 32:24
 East 2:10 44:7
 education 9:8
 educational 9:2,5,5
 either 8:7 25:23 26:21 40:17
 electronic 14:3 41:3
 else 7:12 15:10 23:11 29:17,21
 employed 4:13,15
 encourage 41:18
 end 5:11 11:21

MICHAEL STEL - 11/01/01 / HALL V. CUNY - MUTUAL

enforcement 41:16
ensure 41:20
entire 17:8,10
Eric 4:10
Erin 7:14,15,21 8:9
escaping 20:16
essence 33:21
established 20:14
et 2:4 12:5 26:24
ever 34:9 37:15,24 38:1
every 23:8,10 38:6
everything 28:12
evidence 27:15 42:21,23
exact 26:12
Examination 3:2 4:7 44:18
examiner 9:15 11:25 12:7,15,22
13:1
example 38:17
exception 4:3
exhibits 3:5
exists 42:10
expect 32:14
expected 6:5
explain 32:11
explained 18:23 30:12
explicitly 41:14 43:9
exposed 9:12

F

fact 17:7,13 25:24 33:11
familiar 19:4
February 17:23 18:14,17,21,22
30:6,11 33:20
Federal 44:16
female 7:17
field 9:15 11:25 12:1,7,14,21 13:1
file 5:10 13:21 14:6,7,19,25 15:13,
15,17,18,19,21,25 16:1,2,4,5,7,9,
18,24 17:1,3,4,8,10,12 19:4 20:4,
21,22 21:2,18 25:16 26:2,7 27:15,
22 29:19 32:10 34:22 37:4 38:12
42:22
filed 24:24
files 36:7,11,12
fill 27:14
filled 23:17,22 24:9 29:11
find 8:9 14:16
findings 21:5 22:2,11,15
fine 4:5 28:4 43:24
first 3:8 9:14 16:8,10,15 22:22 33:
19 34:16 37:24 38:1 42:2
five 21:14
focus 16:24 31:4
focused 13:11
follow 24:11
follow-up 39:11
following 21:8 24:24 41:20
follows 3:10
forgot 28:2
form 12:9 14:3 15:1 17:25 20:7
23:1,4,5,17,23 24:5,11,21 25:21
26:3,11,18 27:14 29:2,6,11,15,16
31:2,2,12 34:24 36:24 38:7,14 39:
4 40:23
formal 6:8 9:5 10:12
format 38:10,10
forms 11:4 14:1,8 23:8,13 26:23
forth 9:22
found 24:14
frame 7:10
fraud 4:23,24,24,25 5:4,25 6:4,5,
7,8,17,21 9:12,15,18,24,24 10:3,3,
8,21,24 11:5,23 12:4,6,8 13:11 16:
22 17:2,25 20:5,6,11,13 23:8,14,
15,17,23 24:4,10 26:4,8,17 27:8,8,
11,16 28:25 29:2,5 30:2,19 31:9,
15,18,21,24 32:20 33:8,12 35:8,19
36:10 37:1,12 38:4,22 39:3 41:
13,15,22 42:4,7,11,14,17,24 43:10
fraudulent 25:20,24
frighten 34:19
full 4:9
further 34:8

G

gave 11:18
general 5:21 17:16 19:8 20:17 21:
17,22 31:14 33:8 38:21
general's 17:17,21,23 18:1 23:24
27:9 28:18,19 29:12,16 30:2 31:
10,17 32:10,17 33:15 34:10,21 35:
8,12,19 36:24 37:18 38:6,13,20 39:

3,16,23
Generally 8:18 39:16
getting 24:7 28:1
give 27:25 40:5
given 6:7 9:25
goes 41:22
Good 4:6 38:17
got 28:2
Group 2:4 4:14 27:2 41:6
guess 11:25
guidance 41:20

H

H-E-F-T-Y 7:20
Hall 2:3 14:9 15:15,22 16:9 17:24
18:24 19:12,19 20:19,25 24:21 25:
1,9 29:24 30:1,7,13,22 31:2,5 32:1,
4,7 33:7,11 34:9,14,18 35:23 38:3,
10 40:22 42:13
Hall's 19:24 22:23 23:18 24:24 25:
5 30:7
happening 16:8 29:23
Harrisburg 2:19
having 15:22
he'll 4:3
head 7:1
health 22:7
hear 22:5
Hefty 7:14,19,21 8:9
held 9:14 12:20,25
help 14:13 33:10
helpful 24:19
here 9:22 16:1 19:6 21:3,7 25:7
27:20 32:25 43:7,9
Here's 25:18
hereby 44:4
high 40:11
Hill 2:16
history 24:23 25:2,3,8 30:16
Hold 43:23
home 14:25 15:7 19:1 24:22 30:7,
14
homeowner's 14:25 39:21
hours 6:10,12
How 5:6 6:7,22 7:7,7,15,19 11:4
12:7 13:21 14:10,13,16,20,21,23
15:6 22:1 36:3,3,8 37:9,12,12 39:
20 40:11,15
However 21:17 40:10
hundred 40:1
Hurley's 23:18
husband 34:11

I

I'd 25:15
identification 3:5
identified 40:12
identify 40:15
immunity 41:18
important 30:16
include 4:23
included 10:5 34:22
includes 9:8,10,11
independent 15:25 26:6
indicate 17:7 18:18 32:19 35:13
indicated 21:9
indicates 30:7
indicating 41:5
indication 18:13,15
indications 22:4
individual 22:7
individuals 5:24 10:20 31:1
inform 30:18 32:20 33:12
informal 6:16,18
information 10:11 12:5 14:12 15:
15 17:5,6,12 18:19,23,25 19:2 20:
19,23 23:13,23 24:3,25 25:1,5,8
27:22 30:12,13,23 31:20 32:5,22
33:3 34:13 35:2 40:10
informing 30:1
instance 2:3
insurance 8:25 9:13 13:11 16:22
17:1,25 19:1,13,24 20:1,5,18,20,25
22:25 23:14,14,15,17,23 24:22 25:
5,11 26:16 27:16 30:8,15,17,19 31:
15,22,23,23 32:11,20 41:8,10,13,
15,22 42:4,7,11,17,24 43:10
insured 38:11,12
insurer 41:14 42:2,9 43:10
insurers 41:12
interest 44:12
interject 27:19

internally 37:2
International 13:13,19
interoffice 14:7
interrogatories 44:10
investigate 31:17 34:11
investigated 31:23 36:3
investigating 14:24
investigation 4:18,19,24 9:12,12,
16 10:4,8 11:20 12:3,4,6,8 13:14,
20,22 15:7 17:17 26:6,7 31:9 32:
14 34:15 36:5,10 37:1 38:13,22
41:17 42:10
investigations 7:8 8:15,25 9:7 10:
3 11:15 12:18,21 13:10 28:25 31:
21 37:13
investigator 20:5
involved 13:25 14:10,14,17 15:6,9
21:14 30:17 36:11
involvement 16:13 18:2
involving 31:23
isn't 18:12 30:23 31:6,13 32:1 33:
25 41:24
issued 41:11
itself 32:3

J

January 12:16,19 13:2,4,4,5
job 4:16,19 8:19 9:3 11:20 12:25
27:13

K

K-O-E-N-I-G 37:10
keep 35:9,17,21,25 36:1,2,7
Kelley 3:4 4:1 5:17 10:16 12:9 15:
1 17:18 18:6 20:7,12 24:6 25:21
26:18 27:19 35:10 36:17 37:20 38:
14 39:4 40:8,17 42:16 43:6,13,16,
19,23
kept 10:11
kind 9:22 16:4 35:17
kinds 9:1
knew 23:20 31:5 43:12
know 5:3,7,9 12:6,15,16,20 7:2,
15,23 8:13,15,22 10:10,13 12:12
16:20 19:2 21:7,9,15,24 22:1,4,8,
10 23:16,20 31:22 36:18 39:20 41:
7 43:18
knowledge 11:18 27:13 28:21 31:
16 32:22 34:13
known 19:19
Koenig 37:6,7,9,11

L

labeled 17:16
large 7:7
Larson 5:4,6,20,24 9:24 10:20 16:
21 17:13 18:12,13,18
Larson's 6:3 15:11 18:16,22 30:
11
last 13:8,12,18 15:18 25:16
later 34:4
Law 2:10,18 26:10,13 41:12,14,15,
17 43:9
laws 39:5
lawyers 43:8
lead 33:10
leads 27:15
least 28:16
leave 7:21 8:18
led 42:22
left 8:15
legal 9:20,20 20:8
length 5:12
Less 5:8
let 10:13 17:15 20:16 39:13
Let's 9:4 29:22 41:2
letter 17:20,22,24 18:14,16,16,21,
23 28:18,19 29:23 30:3,6,11 32:3,
9,19 33:21,24 34:2,6,10,16,18 36:
23,25 38:5,9,11,18
letters 21:14 33:18 38:3
life 31:22
like 6:20 28:23 43:8
likely 21:19
Linda 5:16
LISA 2:7 44:3
listed 31:1
little 38:17
location 8:9,13
long 5:6 21:16
look 14:18 16:3 18:7 25:15 28:4
36:8 39:9

looked 15:16,18
looking 41:3
loss 30:10
lot 9:1,11 41:8

M

made 23:16 29:19 35:4,14 36:16
39:20 40:19
Madison 2:11 7:23 44:8,20
mail 14:7
maintain 10:22 36:12
maintained 35:15
maintains 8:11 10:2
major 4:25
make 10:17 14:19 27:12,23 28:23
35:18 40:14
making 25:25
malignant 22:2
management 4:21 9:10 11:21
manager 4:16,17,18,20 11:20 12:
18,21 13:3,6,10,22 28:25
manual 26:22 27:4,6,10
many 7:7 12:7 36:3,4 37:12,13 39:
20 40:15
March 12:16 13:2 17:21 34:3
marked 3:5
master's 9:8 11:11,13
material 9:25 10:2,8 28:16 33:9
materials 10:5,9,14,19,24
matter 2:2 30:19,21 31:8 34:8 38:
21 39:2
may 6:18,19,19,21 12:24 14:15
21:1 28:20 29:3,4,5 36:20,20 42:
24 43:2
McNEES 2:18
mean 5:17 6:1 14:19 16:1 38:16
mechanism 13:23,24
media 22:5
medical 18:23,24 19:2,11 20:3 21:
5,21 22:15,16,16 24:23,25 25:1,2,
3,12 30:12,13,15 34:22
meet 41:21
meeting 27:20
melanocytic 22:8
melanoma 22:4,20
Melli 2:9 44:7
memo 41:4
memory 16:2
memos 17:6
mentioned 11:11,17 26:22
message 14:3
MICHAEL 2:1 3:7 4:10 44:17
Middle 2:6
Mike 15:2 20:15
mind 9:23 16:11 25:20 29:4
minutes 28:3
mole 21:8 22:19
month 34:4 36:24
monthly 40:15
more 11:21 12:12 34:14 38:9 40:
1,3
mortgage 14:25 15:7 19:1 24:22
30:7,15
most 23:12 24:19
mostly 23:12
Mrs 17:24 29:24 30:1 33:11 34:9,
14,14,18 38:3,10
Ms 30:7
Mutual 2:4 4:14,15 7:8,21,22,24 9:
14 10:2,8,22 11:4 12:1 21:23 23:
19 27:2 29:1 37:2,16,25 38:21,25
41:6
Mutual's 39:1
myself 7:9,11

N

name 4:9
Nancy 2:3
nationwide 35:17 40:16
nature 30:18
necessarily 25:25 26:5,16,20 27:7
32:18 36:19
need 15:9 27:1,14
needed 42:25
negative 36:4
nevus 21:24 22:1,20 43:15
next 16:16 29:22
nodded 7:1
nodding 6:25
None 17:9
Notary 2:8 44:3
note 10:17 43:6

MICHAEL STEL - 11/01/01 / HALL V. CUNY TUAL

noted 5:10
notes 17:6
Nothing 16:11 18:11 44:19
notice 2:7 44:17
November 2:12 44:6,21
now 14:22 15:21 16:1 19:18 20:17
25:7 28:5 30:22 43:8 44:15
number 14:1,7 36:3 40:24
NURICK 2:18

O

o'clock 2:13
oath 3:10
Object 12:9 15:1 20:7 25:21 26:18
36:20 38:14 39:4
objection 20:12 37:20 39:12 40:8
43:7,14,17,20
Objections 36:16
obligation 41:21
obligations 41:12
obtain 23:4
obtained 18:23 25:5 30:12
occur 6:9 42:12,18 43:3
occurred 42:11,14,17,24 43:2,3
occurring 42:12,18 43:3
October 13:17
office 14:13 15:5 17:21,24 18:1
23:24 27:9 28:18,19 29:12,17 30:2
31:10,14,17 32:10,17 33:15 34:21
35:9,12,15 36:24 38:13,20 39:3
40:10
officer 12:1
offices 35:19 37:18 39:17,23
often 6:7 31:22 36:8
Oftentimes 29:10
oh 17:18
Okay 16:14 17:19 30:6 37:23 40:
13 41:2
on-the-job 9:9,17
one 13:18 18:18 23:22 24:13 25:
11,14 33:19 34:4 35:23 36:24 38:5
40:5 41:3,24,25
only 14:18 15:16 29:18 37:3
onto 13:21
opinion 26:3,3
order 26:25 27:1
other 5:1 6:14 7:13 11:2 16:3 21:
22 22:5 29:18 35:7,13,21 43:22
others 19:17
out 14:16 23:17,22 24:9 27:14 29:
11 40:16,21
outline 12:24
over 9:2 12:14,17 13:8
own 6:18 11:9 22:6 26:3

P

p.m 43:25
Page 3:2
paid 25:6 32:12
paragraph 41:4
paraphrase 30:5
part 5:2 23:13 24:9,9 25:19 36:13,
19
particular 14:6
parties 44:12
past 5:5
pathology 21:8 22:13 43:12
Pease 2:10 44:7
PEDERSEN 2:15 3:3 4:5,8 5:18
10:18 18:9 24:8 36:14,22 37:22
40:13 42:19 43:21
pending 2:5 44:16
Pennsylvania 2:6,16,19 17:22 22:
25 23:3,24 26:1,10,12 27:14 28:13
29:12 30:19 31:9 32:20 33:4 35:8,
14,21 38:19,24 40:21 41:6,10,12,
14,17 43:1,9
people 7:7 31:21
per 6:12 39:21
period 7:11,12 10:15,19 12:14
person 7:13 31:18 44:11
personnel 8:8
persons 41:18
place 31:21 32:14
plaintiff 2:3,4 44:9
Please 4:9 30:21
point 13:3 15:13,14
policies 10:22,25 11:4 39:15,19,
21
policy 14:25,25 15:8 39:14
portion 9:3 11:19
position 6:3 9:14,17 12:2,4 15:11

positions 9:10
positive 36:4,9
potential 30:2 31:23 35:7 38:11
Potentially 15:12 20:18,20
practice 14:23 15:5
practices 39:1,15
premiums 32:11
preparation 21:11
present 13:6
presented 21:18 25:13
president 37:8
pretty 38:16
prevention 4:24
previously 39:9
prior 13:17
probably 40:24 41:8
procedures 10:22,25 39:18
process 5:23 6:1 30:16
produced 28:5 32:24
producing 36:16
Professional 2:8 44:23
prompted 16:21 42:25
prosecuted 36:10
prosecution 41:17
protect 41:18
protection 15:7 24:22 30:8 39:21
provide 5:22 6:6 24:3 25:9 30:23
provided 10:6,9 17:15 18:19 20:
25 24:14 27:21 32:5 33:2
provides 27:6 41:18
provision 26:15
Public 2:8 44:3
purpose 22:17,18,18
pursuant 2:7 44:17
pursue 37:1
pursuing 34:7,19
put 36:17
puts 10:4

Q

qualified 11:14 12:2 22:13,15
qualifies 9:6
question 6:21 7:2 25:3,10,14,22,
23 26:19,20 27:13 30:4 39:5,13
40:9 43:11
questioned 38:1
questions 20:1 24:23 25:11 27:24
30:20 43:22,24

R

range 40:5
reaching 21:19
read 4:3 24:7,18 30:3,5 43:8
really 16:3 40:7
reason 11:17 15:16 32:9
reasonable 42:3,6,10,14,16
reasons 8:22
recall 14:9,13 15:13 16:2,3,5,10,
15 17:10 19:6,18 21:3,15,20 23:21
25:15 26:9 27:4,5 29:20,23 38:2
receive 6:18,19 21:17 33:17 36:21
received 9:17,19 14:21 16:19 32:
25 33:18 34:2 36:23 41:9
receiving 15:14
recognize 5:4 6:3
recognizing 6:17 11:22
recollect 15:16
recollection 15:14,22,25 16:16,18
19:10
record 4:2,9 24:16 36:1,18 43:7
44:14
records 20:3 22:16,23 23:18 25:
12 29:20 34:22 35:1,6,9,13,15,17,
21 36:2
reduced 44:13
Reed 37:6,7,11
refer 18:16 26:25 27:1 35:11 39:2
40:24 42:25
reference 26:14,21 27:4,6,10 33:9
referenced 28:9
referral 16:19 17:13 21:17 23:13
24:15,17 25:25 26:23 31:12 33:22
38:4
referrals 35:14,18 36:3 39:16,20,
22,23 40:6
referred 14:2 15:10 27:3 28:21
30:8 31:8,11 32:24
referring 25:10 38:21,24,25
refers 18:11
refreshed 16:1
regarding 4:23 17:17,18 23:14,15
30:20

Registered 2:8 44:23
regulations 4:25 23:15 26:24
related 9:18 39:19
relates 22:1 24:10 27:23
relative 44:19
released 41:20
remember 16:8
remind 41:11
removal 21:8
removed 22:19
report 11:5 20:13 21:8 22:13 23:8
26:15 33:7 37:5,6,11,12 40:22 43:
12
reported 20:11 35:7 37:17
Reporter 2:8 44:11,23
reporting 10:23 27:7 41:13,15,19,
21 43:10
request 36:20 40:14,19 44:9
requested 24:25
requesting 36:15
require 23:1 36:11 39:14
required 6:11,14 12:4 26:1,10 30:
18 32:19 33:12
requirement 33:7
requirements 5:23 6:2 32:21 38:
19 39:7
requires 26:15 40:22 41:14 43:9
rescinded 25:6
respect 5:15 8:24 9:23 10:3,21,23
14:9 16:8 19:23 22:10 24:3 27:6
39:16
respond 40:18,18
responses 40:16
responsible 4:21 9:6
result 15:17 20:3 33:14 36:5
reveal 19:9
revealed 19:7,10
review 14:6 16:18,22,25 17:3 19:
6,9 21:12,18 22:13,15 26:7 30:9
42:22
reviewed 16:24 17:4,7 19:4 20:22
21:13,16 22:23 23:19 25:16 26:2
28:15,20
reviewing 15:21 16:7 17:10 36:11
revise 41:11
Right 13:1 14:22 19:18 20:16 28:5
31:6,10 33:4,12 40:6,7 42:19
role 16:23
roster 8:8,11,12
routine 15:5
routing 14:5
Ruhly 2:10 44:7

S

S-T-E-L 4:11
said 20:24 44:8,13,14,17,20
same 8:1,2 35:17 42:1
sat 5:21 34:14
Say 10:16 11:2 14:21,22 19:22 23:
20 26:21 29:8 31:22 39:18,25 43:2
says 24:20,21 27:10 28:22 31:14
32:4 42:8 43:2,5,7,8
second 34:2
section 27:8 28:13 29:2 30:19 31:
9,15 32:20 33:8,12 38:4 39:3
sections 24:12,13 37:17
see 14:19 16:4 20:16
seeking 41:20
seminars 9:18,19 13:8
send 29:23 34:9,18,21 35:22 36:9
38:6,6,11
sending 28:19 29:16
sent 23:23 29:11,14 32:9 34:24
35:23 36:24 38:3,9,12 41:7,8
sentence 18:21
September 13:18
series 17:20 27:24
sessions 5:22 6:6,7,9,10,11 9:25
set 40:25
shorthand 44:10
show 8:13 17:15 40:20
showing 25:18
side 16:22
sign 4:3
significance 22:10
signs 22:4
similar 39:7,8
simply 39:13
simultaneously 12:20
since 33:1
sincere 30:9
sit 16:1 19:6 21:3,7 25:7
SIU 4:16,17 13:6

slowly 38:9
some 6:8 10:9 11:18 12:20 14:20
15:13,14,22 16:4 18:19,24 23:6,14
26:23 28:5,24 30:13 35:13
someone 6:2,21 7:12 15:10,11
something 6:20 26:15 27:7,20 36:
9
Sometimes 10:1
somewhere 5:10
sooner 28:2
sorry 5:19 7:1 15:3 17:19 18:6,10
35:20 38:8,23 42:1
sort 9:13 23:6
source 28:6
speak 38:9
speaks 32:3
Special 4:18,19 7:7 8:15,25 9:6
10:4 11:14,20 12:2,17,20 13:10,14,
20,22 28:25
specific 6:20 20:16 21:6,23 22:15
26:14 31:25 36:20 39:18
specifically 5:3 8:17,23 13:24 14:
9 16:6 17:11 21:4,15 24:10 28:20
spell 7:15,19 37:9
staff 4:23 5:15,22 6:6,22,23,24 7:
3,5 9:23
standard 29:6,9 35:11 38:5,10,20,
24,25 39:2
standards 39:1
start 9:4
starting 33:1
State 2:9,11 4:9 23:3,9,10,13 24:
11 26:1,23 28:10 39:10 41:6 42:8
44:1,4,8
stated 32:21
States 2:5 18:22 35:22 39:6,14
41:10 42:8
stating 43:15
statistically 35:25 36:8 37:11 40:
11
statistics 35:9
statutes 26:24 39:8
statutory 41:21
STEL 2:1 3:7 4:10,13 27:21 28:6
44:17
step 14:18 22:22
STEPHEN 2:15
steps 11:5 14:17 15:22 16:4,25
Steve 4:1 10:17 18:6 28:4
still 7:22 8:1
stipulations 4:2
Street 2:10 44:7
submit 26:11
submitted 17:25 29:2,7
submitting 29:6
substance 33:24 34:6
Substantively 33:24
such 5:24 9:24 10:20 35:22 40:22
42:13
sufficient 42:21,23
summary 24:14,17,20
supervise 6:22,23
supervised 5:11
supervising 5:2
supervisor 11:15 12:3
supervisory 11:22
sure 12:11 18:9 24:8 26:12 36:22
39:25 40:4,7
surviving 34:9
suspect 42:23
suspected 10:23 27:17 29:3,4 35:
10 41:13,15,22 43:10
suspicion 27:16 29:4 35:19 42:6
suspicions 37:12
sworn 3:9 44:18
system 14:5

T

tabs 28:10
take 8:19 11:5 12:17 14:1,3,17 18:
7 28:3,4 31:21 32:14
taken 2:2 15:22 40:21 44:5,9,10,
16
takes 14:7
telephone 14:4
tell 14:23 15:4 24:16,19 30:1 34:6
35:6 36:2,7 42:1
telling 36:25 43:4
terminology 22:16
terms 19:8 20:17 21:6,17
testified 3:9 39:8
testify 44:18
testimony 27:3 44:14

MICHAEL STEL - 11/01/01 / HALL V. CUNATUAL

Thank 13:7 30:21 33:21
 That's 4:5,11 11:9 24:19 27:17 28:
 4,12 29:9 32:6,8,22,23 33:11,23,24
 35:11 42:24 43:24
 There's 8:12 15:9 18:11 27:16 41:
 4 42:3
 thereafter 44:12
 thing 9:13 16:8,10,15,16 29:18 37:
 3
 things 9:22 16:22 18:19 22:5 28:
 17
 think 8:2,5 9:3 11:18 23:12 27:10
 29:18 40:2
 thinking 19:15
 Those 4:25 6:11,13 12:25 19:14
 22:10 24:12 28:16 32:21 35:15 36:
 12,16 41:24
 though 43:4
 three 5:8 13:8
 three-ring 11:3 23:6 28:8,10,13,
 16 32:23 33:3 40:21
 time 5:13 7:10,11,12 10:14,19 12:
 14 15:18 17:3 18:25 19:2,12 20:10
 21:13,16 23:16 24:24 25:16 28:17
 29:1 30:14 31:5 36:15 37:24 38:1,
 6 40:15
 times 12:5,7 35:7 37:12,13
 title 4:16 26:12,14
 today 19:6 21:3,7 25:7 27:4
 together 10:4
 told 33:11
 took 16:5 22:23
 top 29:14 31:11
 totality 18:2
 towards 11:21
 track 16:12
 train 6:24 7:3 13:9
 trained 5:4 6:3 10:20
 training 4:23 5:2,3,11,16,21,25 6:
 5,7,9,14,16,18 8:24 9:1,5,10,17,19,
 20,23 10:6,7,10,14,19,24 11:22 13:
 9 21:21,22 32:25
 treating 23:18
 true 44:14
 truth 44:18,19,19
 truthful 32:1
 truthfully 25:9
 try 15:4
 trying 16:12
 twice 6:9
 two 6:9,10,11,12 13:12 31:1 33:18
 two-hour 6:10
 type 38:5
 typed 24:1
 types 13:7
 typewriter 24:1
 typewriting 44:13
 typical 38:17
 Typically 6:8 14:2,20,24 15:6,9
 32:23

U

under 3:10 5:10 17:16 34:15 38:
 25 39:20 41:12
 understand 26:25
 understanding 18:2 19:19,23 20:
 6,10
 undertake 12:8 16:25
 underwriting 30:16
 unit 4:18,20 8:16 9:7 10:4 11:15,
 20 12:3,18,21 13:10,14,22 28:25
 United 2:5
 Units 13:14,20
 until 28:2
 up 37:25 43:7
 upon 15:4,5 22:17 28:24 31:21 39:
 10 44:9
 us 24:16 35:6 36:2,7 39:14 42:1
 use 26:23
 used 11:4 35:11 44:15
 using 22:16
 usual 4:2

V

various 9:10,18 12:5 35:18
 vary 38:16
 verbal 11:2 44:9
 versus 11:22 22:20 43:4
 vice 37:8
 VIII 24:13

W

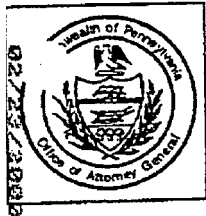
Wait 40:8
 Walker 2:9 44:7
 WALLACE 2:18
 want 9:4 10:13 18:1 24:6,18 27:
 12,25 28:3 33:2
 wanted 14:16
 warrants 29:6
 way 10:12 37:16
 We'll 9:4 36:15 40:14,17
 well 7:12 9:1,8 10:4 12:4 16:3,18
 18:21 20:12 24:11 27:10 29:22 32:
 3 36:17 42:8,22
 What's 8:24 13:23 16:15 17:15
 20:5 22:22 26:14 33:19 34:2 38:20
 39:2
 whatever 39:14
 wherein 2:3
 whether 5:3 7:23 12:12 17:1 21:7
 22:18 23:16,17 26:8 27:11 31:16,
 20 34:14,15 39:11
 whole 44:19
 whom 32:16
 widow 34:9
 will 10:13 26:21 31:17
 Wisconsin 2:9,12 13:13 44:1,4,20
 within 4:22 8:20 11:9 13:23 17:12
 28:12 33:6 37:2 38:20
 Without 26:14 35:4
 witness 2:2 3:8 6:25
 wondering 34:15
 work 8:1 21:22
 working 5:6 8:6
 works 14:20
 wouldn't 19:22
 written 9:25 10:2,5,9
 wrote 21:13

Y

year 6:9,12 13:17 34:14 39:21
 yearly 40:16
 years 5:8 9:2 13:9
 Yesterday 15:20 21:11 27:20
 yourself 7:10 22:6 26:16

Revised 10/1/96

FOR OAG USE ONLY. DATE STAMP.



Send To:

**INSURANCE FRAUD SECTION
OFFICE OF THE ATTORNEY GENERAL**

Commonwealth of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120
ATTN: Referral Form
(717) 787-3391

541- _____

Region Assigned: _____

(PLEASE TYPE or PRINT LEGIBLY)

IF REFERRAL IS FROM AN INSURANCE COMPANY, PLEASE SEE IT IS COMPLETED BY THE SIU.

I. Referring Agency or Private Citizen Information: (Name, address, and fax number.)

CUNA Mutual Group
PO Box 391
5910 Mineral Point Road
Madison, WI 53701

Contact Person: _____

Michael Stel _____

Telephone: 800 356-2644 Ext. 7168

II. Subject Information: (Include name, alias, address, phone number, DOB, and SSN.)

Mr. Tommy B. Hall II
517 Mt. Pleasant Rd.
Fayetteville, PA 17222
(717) 352-5959

SS Number: 563-82-5959

DOB: 05/12/1955

Date of Death: 11/06/99

If additional subjects are involved, please include in Part VIII.

III. Please indicate COUNTIES and/or STATES where:

Incident Occurred _____

Claim Received _____

Claim Mailed From _____

Payment Made From _____

IV. Alleged Fraud Involves:☐ Auto☐ Property☐ Business Struct.☐ Personal Property☐ Bodily☐ Workers' Comp.☐ Agent/Adjuster☐ Employer☐ Employee☐ Atty., Health Care Prov., Medical Professional☒ Other _____**V. Claim Information:**Insurance Company: ~~CUNA Mutual Group~~

Policy Number: 037-1485-6

☐ 1st Party Claim

OR

☐ 3rd Party Claim

Claim No.: _____

Value of Policy: \$56,000

Date of Loss: _____

Date Claim Filed: _____

☐ Paid Amount Paid _____☐ Pending☐ Denied☐ Other coverage Rescinded

If additional companies are involved, please note in Part VIII.

D0007

VI. Vehicle Information:

Make _____ Color _____ Model _____
 Year _____ VIN # _____ State & License # _____
 Title # _____

If additional vehicles are involved, please note in Part VIII.

VII. What investigative information is available? (For SIUs, NICB, and law enforcement only.)

- | | | |
|---|---|--|
| <input type="checkbox"/> Recorded Statement | <input type="checkbox"/> Written Statement | <input type="checkbox"/> EUO |
| <input type="checkbox"/> IME or Peer Review | <input type="checkbox"/> Expert's Report | <input type="checkbox"/> Video |
| <input type="checkbox"/> 35mm | <input type="checkbox"/> Surveillance Reports | <input type="checkbox"/> Police Reports |
| <input type="checkbox"/> Criminal History Check | <input type="checkbox"/> NICB Hit | <input type="checkbox"/> PILR Hit |
| <input type="checkbox"/> Index Bureau Hit | <input type="checkbox"/> SIU Reports | <input checked="" type="checkbox"/> Other <u>Medical documents</u> |

VIII. Please provide a summary of the material false statement(s), written and /or oral, and facts of this allegation. PLEASE DO NOT SEND OR ATTACH ANY ITEMS FROM PART VII OR ATTACH ADDITIONAL SHEETS TO SUMMARIZE THIS INCIDENT.

Mr. Hall applied for Home Mortgage Protection insurance on 11/18/99. The application contains medical history questions. At the time Mr. Hall's claim was filed following his death, additional medical information was requested. The additional medical information confirmed Mr. Hall had not disclosed all of his medical history and did not answer a medical history question on the application correctly. Based on the additional information obtained, Mr. Hall's insurance was rescinded and no benefits were paid.

D0008

Michael E. Stel
SIU Manager
Special Investigation Unit
Phone: 800 356 2644 Ext. 7168
Fax: 608/238-0830

STU Investigations
Fraud Review
563 82 59 59 Hall, Tommy

20

 CUNA MUTUAL GROUP

February 22, 2000

Ms. Nancy Hall
517 Mt. Pleasant Rd.
Fayetteville, PA 17222

Member: Tommy B. Hall II
Contract No.: 037-1485-6

Dear Ms. Hall:

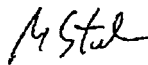
Mr. Hall's Home Mortgage Protection Insurance claim was referred to me for review. You have my sincere condolences on your loss.

As Brenda Larson's February 10, 2000 letter explained, medical information obtained confirms that Mr. Hall did not disclose some medical information at the time he completed the application for Home Mortgage Insurance. Accurate completion of medical history is important to the underwriting process involved with an insurance application.

Due to the nature of this, we are required to inform the Pennsylvania Insurance Fraud Section of this matter.

If you have any questions or concerns regarding this letter, please contact me directly. Thank you.

Sincerely,



Michael E. Stel
SIU Manager
Special Investigation Unit

cc: Patriot Federal Credit Union

02/23/2000



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

February 29, 2000

MIKE FISHER
ATTORNEY GENERAL

Insurance Fraud Section
1600 Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-0272
Facsimile: (717) 705-0741

Michael Stel
CUNA Mutual Group
P.O. Box 391
Madison, WI 53701

Re: Insurance Fraud Referral - Tommy Hall, II - 541-65-0228

Dear Mr. Stel:

Thank you for your insurance fraud referral. Your referral has been processed at our Headquarters Section in Harrisburg. It will be sent to the appropriate regional office for investigation and review.

We will keep you informed regarding the results of that review. In the meantime, if you have any questions, please feel free to contact me at (717) 787-0272.

We do appreciate your efforts and cooperation in assisting us to fight insurance fraud in Pennsylvania.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kirby Conrad".

R. Kirby Conrad
Senior Supervisory Special Agent

RKC:kab
Ref.#541-65-0228H
Claim #

D0010



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

March 29, 2000

MIKE FISHER
ATTORNEY GENERAL

Bureau of Criminal Investigations
Insurance Fraud Section
1600 Strawberry Square
Harrisburg, PA 17120
(717) 787-0272

Michael Stel
CUNA Mutual Group
P.O. Box 391
Madison, WI 53701

Re: Tommy B. Hall, II - #541-65-0228

Dear Mr. Stel:

After a review of this referral, our investigation of the available facts and information indicate that we cannot initiate a criminal investigation at this time. However, should new information develop that is material to these allegations, we would appreciate it if you would advise us so we could revisit the matter with you.

We do appreciate your initiative and assistance in helping us to fight insurance fraud in Pennsylvania. If you have any questions, please feel free to contact me at (717) 787-0272.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Kirby Conrad".

R. Kirby Conrad
Senior Supervisory Special Agent

RKC:kab
File #541-65-0228
Claim #

D0011

23

JOHN S. GENCAVAGE

EXAMINER OF QUESTIONED DOCUMENTS

140 HUNTER LANE, ~~BOX 1166~~
HARRISBURG, PA 17112
(717) 469-0497

DIPLOMATE:
AMERICAN BOARD OF FORENSIC DOCUMENT EXAMINERS
FELLOW:
AMERICAN ACADEMY OF FORENSIC SCIENCES
MEMBER:
AMERICAN SOCIETY OF QUESTIONED DOCUMENT EXAMINERS

May 28, 2002

Michael R. Kelley, Esquire
McNees, Wallace & Nurick LLC
Attorneys At Law
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

received
6/5/02 M.R.K.

Re: Hall, et al v. CUNA MUTUAL

Dear Mr. Kelley:

The following is a report covering my examination of the below listed exhibits. The documents were examined at the offices of John Enders, M.D. and Michael Cashdollar, M.D. 120 North 7th Street, Chambersburg, PA 17201 and the offices of Ernest Charlesworth, M.D. 144 South 8th Street, Chambersburg, PA 17201. The purpose of this examination was to determine, if possible, whether or not Tommy B. Hall II wrote the questioned handwriting appearing on the Q-1 exhibit.

QUESTIONED EXHIBITS:

Q-1. One (1) Medical History form, dated 4-30-98, in the name of Tommy Bob Hall II, containing questioned handprinting under MEDICAL PROBLEMS 1. "CANCEROUS MOLE - REMOVED".

STANDARDS:

The following items were submitted as documents containing known handprinting of Tommy B. Hall II:

S-1. One (1) Falling Spring Medical Associates New Patient Information Record, dated 2-17-99, in the name of Hall II, Tommy B. (front side).

S-2. One (1) Falling Spring Medical Associates New Patient Information Record, dated 2-23-99, in the name of Hall II, Tommy B. (front side).

S-3. One (1) Medical History form, dated 4-30-98, in the name of Tommy Bob Hall II, except the entry under MEDICAL PROBLEMS 1. "CANCEROUS MOLE - REMOVED" and all entries under DATE and HOSPITALIZATIONS/SURGERY (front side).

Michael R. Kelley, Esquire
May 28, 2002
Page 2

OPINION:

Upon completion of a detailed examination and comparison of the handprinting involved in this case, it is the opinion of this examiner that the writer of the S-1 through S-3 exhibits, Tommy B. Hall II, wrote the questioned handprinting "Cancerous Mole - Removed" appearing under MEDICAL PROBLEMS on the Q-1 exhibit.

The questioned and standard writings compare favorably in gross characteristics, including degree of skill, style, slant, lateral alignment, writing movement, letter formations, proportions and other characteristics. All of these factors indicate that Tommy B. Hall II wrote the handprinting in question.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in cursive script, reading "John S. Gencavage". The signature is written in dark ink and is positioned above the printed name and title.

John S. Gencavage
Forensic Document Examiner

JSG/grg

PROFESSIONAL QUALIFICATIONS

JOHN S. GENCAVAGE
140 Hunter Lane
Harrisburg, PA 17112
(717) 469-0497
FAX (717) 469-7572

OCCUPATION:

Forensic Document Examiner

EMPLOYED:

Private Practice - July 1, 1989

EDUCATION:

Bachelor of Science 1977
York College of Pennsylvania
York, PA

Associate of Arts 1975
Harrisburg Area Community College
Harrisburg, PA

Questioned Document Examination Training Course 2/64 - 2/67
Pennsylvania State Police Crime Laboratory, Document Section
Harrisburg, PA

Questioned Document Course 4/64
United States Secret Service
Washington, D.C.

Seminar on Law Enforcement Photography 12/67
Eastman Kodak Company
Rochester, NY

Seminar on Law Enforcement Photography 11/71
Eastman Kodak Company
Harrisburg, PA

Seminar - Survey of Questioned Document Problems 7/75
FBI Academy
Quantico, VA

Signature Seminar 2/88
American Academy of Forensic Sciences Meeting
Philadelphia, PA

Workshop - Identification of Office Copiers 2/88
American Academy of Forensic Sciences Meeting
Philadelphia, PA

Photocopier Workshop 8/89
American Society of Questioned Document Examiners Conference
Arlington, VA

Signature Workshop 8/90
American Society of Questioned Document Examiners Conference
San Jose, CA

Signature Workshop 8/91
American Society of Questioned Document Examiners Conference
Lake Buena Vista, FL

Expert Witness Workshop 8/91
American Society of Questioned Document Examiners Conference
Lake Buena Vista, FL

Deposition Testimony Workshop 8/91
American Society of Questioned Document Examiners Conference
Lake Buena Vista, FL

Canon Fax Workshop 8/91
American Society of Questioned Document Examiners Conference
Lake Buena Vista, FL

Fraudulent Documents Workshop 2/92
American Academy of Forensic Sciences Meeting
New Orleans, LA

Forensic Examination of Counterfeit Documents 8/94
American Society of Questioned Document Examiners Conference
Long Beach, CA

Signature Workshop 8/92
American Society of Questioned Document Examiners Conference
Milwaukee, WI

Video Spectral Examination of Documents Throughout the Spectrum 2/96
American Academy of Forensic Sciences Meeting
Nashville, TN

Difficult Handwriting Problems - Workshop 8/97
American Society of Questioned Document Examiners Conference
Scottsdale, AR

The Examination of Medical Records 5/97
Miami, FL

WORK EXPERIENCE:

Pennsylvania State Police Training School 10/57 - 4/58
Hershey, PA (Enlisted 10/16/57)

Pennsylvania State Police, General Police Duties 1958 -1960
and Equestrian Detail, various locations in the Commonwealth of PA

Pennsylvania State Police Criminal Investigator 1960 - 1964
Harrisburg, PA

Questioned Document Training 1964 - 1967
Photography and other Questioned Document related duties,
Pennsylvania State Police Crime Laboratory, Document Section,
Harrisburg, PA

Forensic Document Examiner and Supervisor 1967 - 1982
Pennsylvania State Police Crime Laboratory, Document Section,
Harrisburg, PA

Assistant Director, Pennsylvania State Police Laboratory 1982 - 1985
Division, Harrisburg, PA

Chief Document Examiner, Pennsylvania State Police 1982 - 1987
Laboratory Division, Document Section (Retired 12/31/87)

Forensic Document Examiner 12/87 - 6/30/89
U. S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms
Forensic Science Laboratory, Rockville, MD

Private Practice - July 1, 1989

LECTURER - INSTRUCTOR - GUEST SPEAKER:

From 1966 to date served as a lecturer, instructor and guest speaker
on the topic of Questioned Document Evidence and related subjects on
numerous occasions. The presentations were adapted to meet the needs
of a wide variety of groups. The following is a list of some of those
groups:

Pennsylvania State Police Academy and Training Centers 1966 - 1987

Harrisburg Area Community College, Police Science/Administration and
Criminalistics Departments 1975 - 1987

Pennsylvania Game Commission and Northeast Wildlife Association
Conference, Harrisburg, PA (Laboratory Tour and Lecture) 4/76

Pennsylvania Engineering Society, Harrisburg, PA 12/76

York College of Pennsylvania, Specialized Photographic Techniques
Spring 1977

Federal Law Enforcement Agents including Military Police and
Investigators, Meeting, New Cumberland Army Depot 1978

Dickinson School of Law, Law Students (Laboratory Tour and Lecture)
1979 - 1987

Shippensburg University, Criminalistics and Criminal Justice students (Laboratory Tour and Lecture) 1979 - 1987

Pennsylvania State University, State College , PA, Seminar, Pennsylvania Association of Arson Investigators, June 1985

National Council of Higher Education Loan Programs, Fraud Conference, San Diego, CA, January 1986

Exchange Club of Harrisburg, PA July 1986

Interviewed as a Guest on Public Television show "Taking Note" Host Lynn Hinds, State College, PA, broadcast 1986

Pennsylvania Higher Education Assistance Agency "Workshop on Detection and Prevention of Fraud, Errors and Abuse in the Government Student Loan Program" Philadelphia, PA, January 1987

CONRAIL CORPORATION white Collar Crime Investigators/Auditors Conference Philadelphia, PA, March 1987

The Institute of Internal Auditors Fraud Conference on Control, Deterrence and Investigation, Atlanta, GA September 1987

The Institute of Internal Auditors Fraud Conference on Control, Deterrence and Investigation, Chicago, IL September 1989

Pennsylvania Association of Private Investigators, September 2001

Lehigh County Pennsylvania Bar Association, February 2002

Assisted in training eleven Forensic Document Examiners for the Pennsylvania State Police and other Agencies between 1966 and 1982

During the Spring of 1970, assisted in training two Malaysian Police Officials, Acting Commissioner Ding Hong Kee and Superintendent Ahmad Bin Haji Abdul, in cooperation with a program sponsored by the U.S. Department of State, Agency for International Development, Washington, D.C.

As Chief Document Examiner, 1982 - 1987, responsible for all Forensic Document related training including the training of three new examiners for the Pennsylvania State Police

Instructor, Federal Law Enforcement Training Center, Glynco, GA

CONSULTANT:

As Chief Document Examiner, served as a consultant to the various agencies of the Commonwealth of Pennsylvania, concerning safety features and other specifications for various official documents.

Assisted the Attorney General's office and Department of Transportation in setting up a program to detect altered odometer readings and Fraud in Motor vehicle Transaction Documents for the prupose of prosecution and consumer protection.

PUBLICATIONS AND PROFESSIONAL PAPERS:

"Facsimile Signatures Produced By Gelatin Transfer Duplicator-Recognition And Identification" Journal of Forensic Sciences

"Recognition And Identification Of Multiple Authorship" Journal of Forensic Sciences

"Water Soluble Paper As Evidence" Journal of Forensic Document Examination

"Examination Of Torn And Cut Paper" Journal of Forensic Document Examination

"Detecting And Identifying Forged Signatures" Director's Memorandum, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

"The Document Section" Pennsylvania State Police Laboratory Manual

"Questioned Document Evidence" a handout prepared for distribution to Special Agents of the Bureau of Alcohol, Tobacco and Firearms

CERTIFICATIONS:

Diplomate, American Board of Forensic Document Examiners, Certified 8/81, Recertified 8/85, 8/90, 8/95, 8/00.

Certified Instructor and Lecturer, Pennsylvania State and Municipal Police Officers Training Commission, March 26, 1976 - Certificate #MPI 663, cancelled 2000.

PROFESSIONAL AFFILIATIONS:

Fellow - American Academy of Forensic Sciences
1988 Questioned Document Section Program Chairman
Questioned Document Section Secretary 1993 - 1994
Questioned Document Section Chairman 1995 - 1996

Member - American Society of Questioned Document Examiners

Life Member - International Association for Identification

Member - Northeastern Association of Forensic Sciences

COURT TESTIMONY:

Federal, State and Local Courts, Hearing Boards and Commissions. Qualified as a Forensic Document Examiner and testified as an expert concerning a wide variety of questioned document problems in the majority of the County Courts of Record in the Commonwealth of Pennsylvania since 1967. Testified in Commonwealth Court, State Civil Service Commission Hearings, Philadelphia Police Department Disciplinary Board, Investigative Grand Juries and Federal District Courts: Charlotte, NC, Philadelphia and Harrisburg, PA, Wichita, KS, Alexandria, VA, Rochester, NY, Arbitration Board Hearing, Stamford, CT, Superior Court, Monmouth County, NJ and Chenango County, NY.

Madison Freelance
Reporters, LLC



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v.

Law No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

* * * * *

DEPOSITION OF RICHARD FISCHER

Thursday, March 14th, 2002

1:20 p.m.

Reported by: Becky J. Gantt, RPR



131 W. Wilson St. • Suite 1000 • Madison, Wisconsin 53703

Phone: (608) 255-8100 Fax: (608) 255-4096

www.madisonfreelance.com

HALL v. CUNA

3-14-02

RICHARD FISCHER

1 A I do not, no.
 2 Q Have you at any point reviewed the deposition
 3 transcript of Dr. Hurley, the doctor who removed the
 4 mole?
 5 A Not to my knowledge.
 6 Q Have you ever reviewed the hospital surgical records
 7 where the mole was removed?
 8 A Not to my knowledge.
 9 Q Have you ever read Mr. Hall's deposition transcripts,
 10 two depositions taken before he died?
 11 A No, I have not.
 12 Q Have you ever seen Mr. Hall's video deposition taken
 13 before he died in which he discusses his knowledge of
 14 cancer after the application?
 15 A No, I have not.
 16 Q Are you personally playing any role in the continuing
 17 process of Mrs. Hall's request for reconsideration of
 18 the rescission?
 19 MR. KELLEY: Objection. I think that
 20 relates to the objection that I made earlier,
 21 and I'll instruct the witness not to respond to
 22 that.
 23 MR. PEDERSEN: And my same response is
 24 repeated here by reference.
 25 By Mr. Pedersen:

69

1 Q Are you aware that as a CUNA representative and vice
 2 president that --
 3 MR. KELLEY: Assistant vice president.
 4 By Mr. Pedersen:
 5 Q I'm sorry. Assistant vice president, that deposition
 6 transcripts have been provided to CUNA Mutual where
 7 Dr. Hurley testified there was no cancer in '93?
 8 A I'm not aware of that.
 9 Q Are you aware of the deposition transcripts from the
 10 pathologists who reviewed the '93 slides stating
 11 those were noncancerous findings?
 12 A I am not.
 13 Q Are you even aware of the video deposition transcript
 14 of Mr. Hall taken before he died where he said he
 15 didn't know about cancer until February of '99?
 16 A No.
 17 Q Are you aware of the depositions of at least four
 18 doctors that have been taken more recently in which
 19 the doctors describe their understanding of
 20 Mr. Hall's medical condition?
 21 A I'm aware of those.
 22 Q Are you aware that at least three of those four
 23 doctors, the only three who were questioned about
 24 this issue, testified that it would be an abuse of
 25 their records to imply or infer that Mr. Hall knew he

70

1 had cancer before the application?
 2 MR. KELLEY: Objection. As I've
 3 stated in the previous deposition, or maybe it
 4 was one or maybe it was two depositions in which
 5 that question was asked, I believe that is a
 6 mischaracterization of the totality of the
 7 physicians' testimony in those cases and I
 8 believe it's argumentative and the witness is
 9 instructed not to respond to that.
 10 MR. PEDERSEN: It wasn't an attempt to
 11 categorize their entire testimony but certainly
 12 to abstract from that testimony the conclusion
 13 they reached that it would be an abuse of their
 14 records to imply or infer that Mr. Hall knew he
 15 had cancer prior to the application. And I
 16 understand there's an instruction not to answer.
 17 By Mr. Pedersen:
 18 Q Are you aware that CUNA Mutual through its discovery
 19 process has not found a single pathology report prior
 20 to the application that evidences cancer?
 21 MR. KELLEY: Objection. Discovery
 22 process is not concluded.
 23 By Mr. Pedersen:
 24 Q Are you aware up to this point that that's the case?
 25 MR. KELLEY: You can answer.

71

1 A I'm not aware of that.
 2 By Mr. Pedersen:
 3 Q Are you aware that CUNA Mutual has not discovered up
 4 to this point a single document which shows in the
 5 medical record contemporaneous with the event a
 6 treatment for cancer prior to the application?
 7 A Can you state that again?
 8 Q Sure. Are you aware that CUNA Mutual through its
 9 discovery up to this point has not located a single
 10 document which shows contemporaneous with the
 11 treatment any treatment for cancer before the
 12 application?
 13 MR. KELLEY: Objection. You can
 14 answer.
 15 A I am not aware of that.
 16 By Mr. Pedersen:
 17 Q Are you aware that when the treating doctors were
 18 deposed that they provided an explanation for the
 19 entries in their record that after a lump was found
 20 on the neck they began to associate the '93 mole with
 21 that lump and that's why it's in their records
 22 subsequent to the application?
 23 MR. KELLEY: Objection. That is a
 24 misstatement of the testimony of the physicians
 25 that have been deposed. This witness was not

72

HALL v. CUNA

3-14-02

RICHARD FISCHER

1 present at those depositions and asking this
 2 witness if he's aware of the mischaracterization
 3 of your testimony is an improper question.
 4 There's no possible way he can respond to that.
 5 By Mr. Pedersen:
 6 Q Would you agree that CUNA Mutual up until today, the
 7 day of your deposition, is continuing to refuse to
 8 pay any benefits to the Halls under their policy?
 9 MR. KELLEY: Object to the form of the
 10 question. CUNA Mutual is investigating the
 11 claim. Go ahead. You can answer it.
 12 A Could you state it again?
 13 By Mr. Pedersen:
 14 Q Sure. Are you aware that CUNA Mutual up to today,
 15 the present day, has refused to pay a single benefit
 16 or dollar under the Hall CUNA Mutual insurance
 17 policy?
 18 A Yes.
 19 Q Are you aware that Mrs. Hall lost her home as a
 20 result of CUNA Mutual's refusal to pay?
 21 A No.
 22 Q Are you aware that Mrs. Hall is a live-in maid
 23 following the loss of her home?
 24 A No.
 25 MR. KELLEY: Just -- I'm sorry. I

73

1 know it's one question past but just interpose
 2 an objection to the form in the question before
 3 the last one about Mrs. Hall losing her home as
 4 a result of CUNA Mutual's refusal to pay the
 5 claim. I object to the form of that. Sorry.
 6 By Mr. Pedersen:
 7 Q Are you aware that CUNA Mutual reported Mr. Hall
 8 after he died for criminal prosecution to the
 9 Attorney General's Office in Pennsylvania?
 10 MR. KELLEY: Object to the form.
 11 Assumes facts that are not accurate. Go ahead.
 12 You can answer.
 13 A I'm aware.
 14 By Mr. Pedersen:
 15 Q Are you aware that CUNA Mutual wrote a letter to Mrs.
 16 Hall telling her of the criminal referral?
 17 A I'm not aware of that.
 18 Q Are you aware that CUNA Mutual received a letter
 19 within 30 days from the Attorney General's Office
 20 that they were not going to investigate the claim?
 21 A Yes.
 22 Q And are you aware that no one at CUNA Mutual ever
 23 conveyed that information to Mrs. Hall?
 24 A No.
 25 Q Are you aware that in addition to sending a letter to

74

1 Mrs. Hall that CUNA Mutual sent a letter to her
 2 credit union where she banked concerning the criminal
 3 referral?
 4 A No.
 5 Q And are you aware that CUNA Mutual never wrote to
 6 that credit union clearing up that the matter was not
 7 being investigated?
 8 A No.
 9 Q Do you know of any reason or justification why CUNA
 10 Mutual today hasn't paid Mrs. Hall?
 11 MR. KELLEY: I object to the question.
 12 The witness is instructed not to answer that.
 13 That's clearly an improper question.
 14 MR. PEDERSEN: Again, this is a
 15 corporate designee who's been brought here, and
 16 I am entitled to ask someone at CUNA Mutual why
 17 they're not paying Mrs. Hall.
 18 MR. KELLEY: The question is improper
 19 and it requires information that would involve
 20 attorney-client privilege, work product
 21 privilege. The question involves legal analysis
 22 which the deponent is not qualified to provide,
 23 and the question is improper and I instruct the
 24 witness not to respond to that.
 25 MR. PEDERSEN: And just to place it on

75

1 the record, I don't believe that an insurance
 2 company can hide behind their attorney when they
 3 have a duty to pay a claim, to pay it promptly
 4 and timely, to thoroughly and properly
 5 investigate a claim and as new information comes
 6 to light reconsider their decisions and pay a
 7 claim. They cannot simply hide behind their
 8 attorney and refuse to consider the claim and
 9 the damage being done to their own insured.
 10 MR. KELLEY: I object to the
 11 characterizations by opposing counsel.
 12 By Mr. Pedersen:
 13 Q Who is your direct supervisor at CUNA Mutual?
 14 A Dan Meylink.
 15 Q What is Dan Meylink's position?
 16 A He's a vice president of the organization.
 17 Q How do you spell Meylink?
 18 A M-e-y-l-i-n-k.
 19 Q Is Dan Meylink participating in the decision not to
 20 pay benefits?
 21 MR. KELLEY: Objection. Don't answer
 22 that.
 23 By Mr. Pedersen:
 24 Q Could you describe for me the organizational
 25 structure of CUNA Mutual beginning with, my

76

1 understanding is CUNA Mutual Group?
 2 A CUNA Mutual Group is a marketing name. It's not a
 3 legal entity.
 4 Q Are you aware whether or not CUNA Mutual Group
 5 reports statistics to various reporting agencies and
 6 entities?
 7 MR. KELLEY: Object to the form. You
 8 can answer it.
 9 A The CUNA Mutual Group does not.
 10 By Mr. Pedersen:
 11 Q It doesn't? I'm sorry. They don't provide
 12 statistics, statistical information to reporting
 13 agencies?
 14 A No. CUNA Mutual Insurance Society would.
 15 Q They don't provide information to Standard & Poors?
 16 MR. KELLEY: I'm sorry. You said
 17 they.
 18 By Mr. Pedersen:
 19 Q CUNA Mutual Group doesn't provide information to
 20 Standard & Poors on their statistics?
 21 MR. KELLEY: Object to the form of the
 22 question. Go ahead. You can answer if you
 23 know.
 24 A I don't know under what company label they report to
 25 Best.

77

1 By Mr. Pedersen:
 2 Q That's A.N. Best?
 3 A Yes.
 4 Q That's different than the Standard & Poors; isn't it.
 5 A I'm sorry. I thought you said Best.
 6 MR. KELLEY: No. His question was
 7 Standard & Poors.
 8 A My answer would be the same for Standard & Poors.
 9 By Mr. Pedersen:
 10 Q For Standard & Poors or Best, you're not aware of
 11 CUNA Mutual Group's reporting?
 12 A Yes.
 13 MR. KELLEY: Well -- okay. Go ahead.
 14 By Mr. Pedersen:
 15 Q Can you describe for me from CUNA Mutual Group down
 16 the organizational chart or structure of CUNA Mutual
 17 Group?
 18 MR. KELLEY: Object to the form. Go
 19 ahead. You can answer.
 20 A The people --
 21 By Mr. Pedersen:
 22 Q Not the names of the individuals, the names of the
 23 organizations.
 24 A I cannot.
 25 Q You work for CUNA Mutual Insurance Society?

78

1 A Yes.
 2 Q What is -- is there a parent entity or organization
 3 for CUNA Mutual Insurance Society?
 4 MR. KELLEY: Objection. Calls for a
 5 legal conclusion. You can answer it if you
 6 know.
 7 A I don't know.
 8 By Mr. Pedersen:
 9 Q Do you know whether or not there are subsidiary
 10 organizations to CUNA Mutual Insurance Society?
 11 MR. KELLEY: Objection. Calls for a
 12 legal analysis. You can answer it if you know.
 13 A I don't know.
 14 By Mr. Pedersen:
 15 Q Do you know whether or not there are affiliated
 16 entities with CUNA Mutual Insurance Society?
 17 MR. KELLEY: Same objection. You can
 18 answer.
 19 A I don't know.
 20 By Mr. Pedersen:
 21 Q What is the relationship between CUNA Mutual
 22 Insurance Society and CUNA Mutual Life Insurance
 23 Company?
 24 A I don't know under which corporate legal names those
 25 two are related.

79

1 Q Are you able to -- I'm sorry. Maybe you didn't
 2 finish.
 3 A No.
 4 Q Are you able to draw for us the organizational chart
 5 of CUNA Mutual Insurance Society?
 6 A No.
 7 Q I don't believe I asked it. I'm sure defense counsel
 8 will correct me if I have. How long have you worked
 9 at CUNA Mutual Insurance Society?
 10 MR. KELLEY: You have not.
 11 A 13 years.
 12 By Mr. Pedersen:
 13 Q When did you first start with CUNA Mutual Insurance
 14 Society?
 15 A In 1989.
 16 Q In what capacity did you start working there?
 17 A I was an actuarial student.
 18 Q Where were you a student?
 19 A It's a position within CUNA Mutual Group.
 20 Q Oh. I see. You were as -- you weren't a student
 21 somewhere else and then were an actuary in training
 22 at CUNA Mutual?
 23 MR. KELLEY: Object to the form.
 24 By Mr. Pedersen:
 25 Q Let me just go on with another question.

80

HALL v. CUNA

3-14-02

RICHARD FISCHER

1 A Okay.
 2 Q What were your duties as an actuarial student at CUNA
 3 Mutual in 1989?
 4 A Just centered around pricing of credit disability and
 5 credit life insurance.
 6 Q When did your job duties change at CUNA Mutual?
 7 A I was in that category for about six years.
 8 Q And then what position did you get?
 9 A I led a product development unit.
 10 Q Which product development unit?
 11 A Related to credit insurance products.
 12 Q When did this product home, members home mortgage
 13 protection come into being?
 14 A Around 1988.
 15 Q I notice it has a No. 2 by it. What's the difference
 16 between the No. 1 and the No. 2?
 17 A The No. 2 made a distinction in their rating between
 18 people who used tobacco and people who did not.
 19 Q After you worked in the credit life, could you just
 20 describe for us your work history after that with
 21 CUNA Mutual?
 22 A I worked six, six to seven years in the pricing role,
 23 about three years in that product development role
 24 related to credit insurance, again, a little over a
 25 year in a staff underwriting role.

81

1 Q Was the staff underwriting specifically on the home
 2 mortgage protection plans?
 3 A Not specifically.
 4 Q More general under credit life and that was a
 5 subdivision or subcategory?
 6 A Yes.
 7 Q And then what did you do?
 8 A A little over a year as a product manager for the
 9 credit insurance lines.
 10 Q Including members home mortgage protection?
 11 A Yes.
 12 Q And then?
 13 A About six months, the remainder in product leadership
 14 role.
 15 Q And is that where you are today or --
 16 A Yes.
 17 Q When did you become the assistant vice president at
 18 CUNA Mutual?
 19 A When I took on the product manager's role.
 20 Q And how many years ago was that?
 21 A About a year and a half.
 22 Q What was the last educational level that you
 23 attained?
 24 A I graduated college.
 25 Q Which college?

82

1 A St. Norbert College.
 2 Q I'm sorry. How do you spell Norbert?
 3 A N-o-r-b-e-r-t.
 4 Q Where is that?
 5 A De Pere, Wisconsin.
 6 Q It's in Wisconsin. Okay. And you got a B.S. degree?
 7 A B.A.
 8 Q B.A. In what field?
 9 A Mathematics.
 10 Q Have you had any other training after that, formal
 11 education after that?
 12 MR. KELLEY: Just so we're clear, are
 13 you talking about any other formal, you know,
 14 college or master's degree, that kind of thing
 15 as opposed to insurance training --
 16 MR. PEDERSEN: Yes.
 17 MR. KELLEY: -- with CUNA and that
 18 kind of thing?
 19 MR. PEDERSEN: Yes.
 20 A No.
 21 By Mr. Pedersen:
 22 Q Within CUNA have you had any medical training?
 23 A No.
 24 Q Do you have any medical background at all?
 25 A No.

83

1 Q Do you know how many times CUNA Mutual has been sued
 2 in the last five years?
 3 MR. KELLEY: Objection.
 4 A No.
 5 MR. KELLEY: Okay.
 6 MR. PEDERSEN: That makes it easier if
 7 you don't know.
 8 MR. KELLEY: Fine.
 9 By Mr. Pedersen:
 10 Q Who would know that?
 11 MR. KELLEY: Just -- I'm sorry. Just
 12 so you're aware, when I object wait until I
 13 instruct you to answer before you answer.
 14 By Mr. Pedersen:
 15 Q Who would know that within CUNA Mutual?
 16 A Fay Patzner.
 17 Q And what's her name?
 18 A The head of legal.
 19 Q And what's her name?
 20 A Fay Patzner.
 21 Q The last name I can't --
 22 A Patzner.
 23 Q How do you spell Patzner?
 24 A I don't know.
 25 MR. RICHARDSON: P-a-t-z-n-e-r.

84

HALL v. CUNA

3-14-02

RICHARD FISCHER

1 MR. PEDERSEN: Apart from the
 2 reservation to recall Mr. Fischer or a different
 3 corporate designee to answer the questions that
 4 we've lined up previously, I don't have any
 5 further questions today for Mr. Fischer.

6 MR. KELLEY: Okay. Thank you.

7 (3:40 p.m.)

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85

1 STATE OF WISCONSIN }
 2 COUNTY OF DANE } ss.

3

4 I, BECKY J. GANTT, Registered Professional
 5 Reporter and Notary Public in and for the State of
 6 Wisconsin, do hereby certify that the foregoing is a
 7 true record of the deposition of RICHARD FISCHER, who was
 8 first duly sworn by me; having been taken on the 14th day
 9 of March, 2002, at Davis & Kuelthau, 10 East Doty Street,
 10 in the City of Madison, County of Dane, and State of
 11 Wisconsin, in my presence, and reduced to writing in
 12 accordance with my stenographic notes made at said time
 13 and place.

14 I further certify that I am not a relative
 15 or employee or attorney or counsel for any of the
 16 parties, or a relative or employee of such attorney
 17 or counsel, or financially interested in said action.

18 In witness whereof, I have hereunto set my hand
 19 and affixed my seal of office this 20th day of March,
 20 2002.

21
 22
 23
 24
 25

Notary Public, State of Wisconsin
 My commission Expires 2/16/03

86

| STATUTORY AMOUNTS | | 1998 | 1999 | 2000 | 2001 |
|-------------------|---|----------------|----------------|----------------|----------------|
| MECL | ✓HMP Life ✓Direct Earned Premium (Written + Chg in UPR) | 2,722,278.05 | 2,968,665.87 | 3,154,484.88 | 3,215,318.93 |
| | ✓Claims Paid | 977,856.79 | 790,773.30 | 909,351.89 | 1,031,744.42 |
| | Claim Reserve (without LAE) | 37,194.00 | 39,749.00 | 93,505.00 | 113,926.00 |
| | Policy Reserve | 3,192,949.00 | 3,554,841.00 | 4,084,760.00 | 4,523,957.00 |
| | ✓Credit Union Reimbursement (Mort total split by prem) | 393,965.94 | 429,707.06 | 447,894.57 | 436,079.93 |
| | Experience Refund | - | - | - | - |
| | ✓Oper. Exp. excl. CU Reimb. & Gov. (Mort total split by prem) | 744,985.56 | 751,172.22 | 1,081,944.05 | 760,929.97 |
| | ✓Policies in Force @ 12/31 | 1,233 | 1,303 | 1,331 | 1,311 |
| | ✓Certificates in Force @ 12/31 | 9,472 | 9,764 | 9,877 | 9,601 |
| | Number of Claims Paid | 34 | 28 | 35 | 34 |
| | Number of Claims Denied | 0 | 0 | 3 | 1 |
| | Certificates Rescinded | 0 | 0 | 2 | 1 |
| | | | | | |
| MECL | ✓Direct Earned Premium (Written + Chg in UPR) | 143,446,684.04 | 153,050,386.48 | 167,736,696.69 | 173,565,991.88 |
| | ✓Claims Paid | 88,688,060.59 | 96,322,370.75 | 96,667,001.10 | 100,442,252.13 |
| | Claim Reserve (without LAE) | 13,254,000.00 | 12,114,000.00 | 16,281,000.00 | 14,514,000.00 |
| | Policy Reserve | - | - | - | - |
| | ✓Credit Union Reimbursement | 22,960,789.00 | 25,127,336.00 | 29,203,901.00 | 30,257,305.00 |
| | ✓Incurred Experience Refund | 4,526,128.00 | 5,726,378.00 | 6,917,827.00 | 10,904,152.00 |
| | ✓Operating Expenses excl. CU Reimb. & Gov. | 25,235,115.86 | 26,837,094.29 | 22,258,914.64 | 16,491,090.87 |
| | Policies in Force @ 12/31 | 5,587 | 5,759 | 5,726 | 5,578 |
| | Certificates in Force @ 12/31 | 3,014,334 | 3,065,182 | 3,102,139 | 3,082,514 |
| | Number of Claims Paid | 12,988 | 13,057 | 12,834 | 12,570 |
| | Number claims Denied | 670 | 816 | 871 | 935 |
| | Certificates Rescinded* | ? | ? | ? | ? |

* CUNA data systems are not designed to track rescissions and thus the information is not available. HMP rescissions were obtained by conducting a manual search. A manual search would not be practical for CL.

EXHIBIT

Fischer

BG 3-28-02

EXHIBIT

Fischer

4

BG 3-28-02

STATUTORY AMOUNTS

| | 1998 | 1999 | 2000 | 2001 |
|--|----------------|----------------|----------------|----------------|
| HMP Life | | | | |
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| Claim Reserve (without LAE) | 37,194.00 | 39,749.00 | 93,505.00 | 113,926.00 |
| Policy Reserve | 3,192,949.00 | 3,554,841.00 | 4,084,760.00 | 4,523,957.00 |
| Credit Union Reimbursement (Mort total split by prem) | 333,965.94 | 429,707.06 | 447,894.57 | 436,079.93 |
| Experience Refund | - | - | - | - |
| Oper. Exp. excl. CU Reimb. & Gov. (Mort total split by prem) | 744,985.56 | 751,172.22 | 1,081,944.05 | 760,929.97 |
| Profit Calc | | | | |
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| IECL | | | | |
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| Claim Reserve (without LAE) | 13,254,000.00 | 12,114,000.00 | 16,281,000.00 | 14,514,000.00 |
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| Certificates in Force @ 12/31 | 12,988 | 13,057 | 12,834 | 12,570 |
| Number of Claims Paid | 670 | 816 | 871 | 935 |
| Number claims Denied | ? | ? | ? | ? |
| Certificates Rescinded* | 1,214,590.59 | 177,207.40 | 17,230 | 191.88 |

* CUNA data systems are not designed to track rescissions and thus the information is not available. HMP rescissions were obtained by conducting a manual search. A manual search would not be practical for CL.

HMP

Incurred claims

Am Policy Res

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 436,406.00 361,892 529,919 439,197

8522,052.95

Madison Freelance
Reporters, LLC



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

NANCY HALL, individually and as the
Representative and Administratrix of
the Estate of Tommy Hall, deceased,
her husband,

Plaintiff,

v.

Law No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL
INSURANCE SOCIETY,

Defendants.

* * * * *

DEPOSITION OF PAUL LAWIN

Thursday, March 28th, 2002

1:20 p.m.

Reported by: Becky J. Gantt, RPR



131 W. Wilson St. • Suite 1000 • Madison, Wisconsin 53703

Phone: (608) 255-8100 Fax: (608) 255-4096

www.madisonfreelance.com

1 PAUL LAWIN,
2 having been first duly sworn on oath,
3 was examined and testified as follows:
4

5 EXAMINATION

6 By Mr. Pedersen:

7 Q Good afternoon, Mr. Lawin, we were just introduced.
8 I'm Steve Pedersen, and I represent Mrs. Hall and the
9 estate of her deceased husband in an action that's
10 been brought against CUNA Mutual. Are you aware of
11 any of the facts of what the lawsuit is about?

12 A I talked to Mike and --

13 Q Now, what I'll exclude is any conversations that
14 you've had with Mr. Kelly --

15 A Okay. No.

16 Q -- and only just ask you if as you sit here today you
17 have some awareness of what the lawsuit is about?

18 A I think so.

19 Q And what's your understanding of what it's about?

20 A My understanding -- let's see, her husband bought a
21 policy. We would call it an HMP, home mortgage
22 protection policy, I think '98. He died in '99,
23 cause of death was cancer. We did some investigation
24 on that because there was a question apparently on
25 the application -- I've never seen the application of

1 that policy. There was a question on the application
2 about cancer, and it said no history of cancer.

3 They got some medical records, found some
4 records that said contrarywise. They denied the
5 claim. After that, as I understand it, there was
6 some dealing with the doctor that maybe medical
7 records weren't accurate that they were relying on.
8 That's about the extent of what I know. I don't know
9 where it goes beyond there.

10 Q And do you understand that you're here today not as a
11 factual witness for the investigative or claim
12 process itself but rather as a corporate designee?

13 A Okay. Corporate designee doesn't mean anything to
14 me.

15 Q Let me try to help with it.

16 MR. KELLEY: Let me interject. We
17 have identified Mr. Lawin as a corporate
18 designee to talk about profits and losses with
19 regard to the individual life product through
20 CUNA Mutual Insurance Society.

21 By Mr. Pedersen:

22 Q Okay. With that representation from counsel, what is
23 your position at CUNA Mutual as it relates to profits
24 and losses of individual life products?

25 A I'm an actuary. I'm involved in product management

1 or what we call generically product management. That
2 would mean I would design and price products, watch
3 experience as it plays out. Where we have options,
4 change things, change dividends, for example, on a
5 dividend paid policy would be a typical thing we
6 would do. That's a pretty good description right
7 there, I think.

8 Q What are the products that you as an actuary are
9 responsible for or lines of business?

10 A Over time I've worked on a variety of products.
11 They're all individual life annuity and health
12 business products. Traditional permanent life
13 insurance, term insurance, individual fixed
14 annuities, many years ago disability income, recently
15 I'm working on long-term care insurance.

16 Q Have you played any role with respect to the home
17 mortgage protection plan?

18 A No.

19 Q What are your current job duties at CUNA Mutual?

20 A Made up of two parts really. One would say that I
21 would be involved in exactly the kind of product
22 management I was talking about there. Specifically
23 for life and health insurance products I would say
24 recently I've been working on a long-term care
25 insurance policy that we're developing. A year ago I

1 worked on term insurance policy.

2 Those products are sold primarily
3 through our face-to-face distribution system, and so
4 they're actually sold through CUNA Mutual Life
5 Insurance Company, not through CMIS. I've been
6 working with the people who work on the CMIS direct
7 response products, but I don't feel I have a
8 substantial decision-making role there. I'm kind of
9 an advisory and consulting and discussion role of
10 those products.

11 Q Who employs you?

12 A CUNA Mutual Life Insurance Company.

13 Q Do you know the relationship between CUNA Mutual Life
14 Insurance Company and CUNA Mutual Insurance Society?

15 A I think I understand the relationship.

16 Q What is the relationship?

17 A Well, it's an interesting one. There's a permanent
18 affiliation which means they're two mutual companies
19 that still have separate, in my mind, ownership
20 groups who are the policyowners of those two
21 companies but they have interlocking boards of
22 directors to the extent I think same members.

23 MR. KELLEY: Paul, wait a second. I
24 don't want you to speculate. Tell what you
25 know.

1 A They have same members of boards of directors. I'm
2 not sure what the, what the numbers fall into today.
3 And essentially within the building we manage the
4 companies as if they were one.

5 By Mr. Pedersen:

6 Q What about CUNA Mutual Group? How does that relate
7 to CUNA Mutual Insurance Society or CUNA Mutual Life
8 Insurance?

9 A CUNA Mutual Group to me is a generic marketing name.
10 I wouldn't go beyond it.

11 Q Are you aware of any formal structural link between
12 CUNA Mutual Group and either CMIS or CMLIC?

13 MR. KELLEY: Object to the form. You
14 can answer it.

15 THE WITNESS: Pardon me?

16 MR. KELLEY: I interposed an objection
17 to the form of his question, but you can answer
18 it.

19 A I think I just said it. I think the relationships
20 between CMIS and CML is that director and management
21 thing I referred to earlier.

22 By Mr. Pedersen:

23 Q Do you know whether or not CUNA Mutual Insurance
24 Society files its own annual statements?

25 A I'm not sure of the question.

1 Q Do you play any role or are you aware of annual
2 statements that are filed by insurance companies with
3 various --

4 A I'm aware of annual statements. I have worked on
5 annual statements.

6 Q Are you aware that CUNA Mutual Insurance Society
7 files annual statements in virtually all of the 50
8 states?

9 A Yes.

10 Q And does CUNA Mutual Life Insurance Company also file
11 annual statements?

12 A Yep.

13 Q Does CUNA Mutual Group prepare annual statements?

14 A Again, I'm -- I would be speculating there. I don't
15 view CUNA Mutual Group as an insurance company.

16 Q Have you ever seen or heard of the CUNA Mutual Group
17 annual report?

18 A Something that would be mailed to policyowners, a
19 glossy book?

20 Q I don't have the glossy version. I have some black
21 and whites. But let me show you four documents that
22 are labeled CUNA Mutual Group Annual Report and they
23 correspond with years 1997, '98, '99, and 2000. Have
24 you seen those before?

25 A I can't tell you for sure if I have. I'm a

1 policyowner of CUNA Mutual Life Insurance Company and
2 as such I get a, a glossy thing. But I'm not sure
3 that it was these. I can't say that I have seen
4 these before.

5 Q Do they appear to be annual reports for CUNA Mutual
6 Insurance Group?

7 A The face says CUNA Mutual Group 2000 Annual Report,
8 so that's what I know.

9 Q Okay. Is there financial data in these documents
10 with respect to assets, operating revenues, and
11 income?

12 A Are you talking about this page back here?

13 Q Yeah. The financial statement.

14 A Yep. I can see that page.

15 Q Does that appear to be a financial statement for
16 mutual, CUNA Mutual Group?

17 A That's the way it's labeled.

18 Q Can you tell us as an actuary --

19 A Uh-huh.

20 Q -- and let's start with, with the 2000 and we'll work
21 backwards --

22 A Okay.

23 Q -- 2000 report.

24 A You're on this page?

25 Q Yes. Can you tell me what were the total assets

27

**LIFE
INSURANCE
ANALYSTS, INC.**

**Hall v CUNA Mutual Group and CUNA Mutual Insurance Society
(referred to collectively as CUNA Mutual)**

June 21, 2002

Expert Witness Report Prepared by: Life Insurance Analysts, Inc.
Richard A. Schwartz, FSA, MAAA, CLU

Overview: In my review of the Hall v. CUNA Mutual case, I reviewed the materials described below to prepare this report. Every opinion stated herein is held to a reasonable degree of certainty with respect to the insurance arena and is based upon my knowledge and experience in the areas of life insurance company overall and financial management, product development and pricing, actuarial valuation and underwriting.

It is clear that as part of this review CUNA Mutual breached their insurance contract with Patriot Federal Credit Union for the benefit of Tommy Bob Hall and that their actions were not only unreasonable, but a clear and blatant attempt to deny Mrs. Nancy Hall the benefits that she was fully entitled to receive. Further, the consequences of their actions should have been expected by them based on the facts that were then ascertainable by CUNA Mutual had they done their homework and reviewed the available data when they initially underwrote the insurance application.

In addition, the actions of CUNA Mutual's SIU group, in referring the claim to the fraud unit of the Pennsylvania Office of the Attorney General without any apparent prior investigation, created a hostile and threatening environment to Mrs. Nancy Hall. The apparent purpose was to embarrass her and dissuade her from seeking counsel to defend her contractual right to the proceeds under the rescinded policy. Further when the Office of the Pennsylvania Attorney General declined to proceed with the fraud investigation, CUNA Mutual failed to inform Mrs. Hall that such investigation had been dropped. Clearly when taken together these actions appear to be an attempt to intimidate Mrs. Hall and to discourage her from following through on her claim.

Other areas where CUNA Mutual went beyond what would have been reasonably expected by a prudent insurer were: Allowing the initial claim adjudication process to be handled by someone without sufficient training. In fact only minimal training was provided to Brenda Larson. This case was the first claim she handled. Further CUNA Mutual failed to provide her with adequate supervision. Additionally, during the claims investigation process CUNA Mutual had clear evidence that the first knowledge by Tommy Bob Hall of the malignant melanoma was after the policy was approved for issue. As such, given their less stringent underwriting rules for the HMP line of business, which did not encompass any subsequent medical questions when the

certificate was issued to the credit union (in large measure because the certificate was issued to the credit union and not delivered to the insured), CUNA Mutual clearly attempted to apply more stringent post claim underwriting than was apparently required in this line of business.

Preparations for Report and Data Reviewed:

1. Read depositions of: Dr. Thomas Ansfield, Dr. George Baker, Dr. Michael Cashdollar, Dr. Ernest Charlesworth, Dr. James Chicklo, Richard Fischer (both 3/14/02 and 3/28/02), Nancy Hall (both 1/10/01 and 3/19/02), Tommy Bob Hall (both written and video), Brenda Larson, Paul Lawin, Brenda Lutz and Michael Stel
2. Viewed video deposition of Tommy Bob Hall dated October 18, 1999
3. Reviewed relevant information provided by CUNA Mutual

Major Report Topics:

1. **Underwriting measurement processes for credit life were significantly less stringent than for their individual life insurance policies:** This is evidenced in the assumed or expected pricing mortality rates between the two lines of business. Expected death claims over these two policy types' first twenty years, based on CUNA Mutual's own mortality tables, show that the present value of expected death claims under HMP policies for all insureds issue age 42, are **147%** of those expected under individually underwritten insurance policies.

Why is this important? For individual insurance when the insurance policy is delivered, the applicant is usually asked whether there has been any change in his/her medical condition since the policy was applied for. If this process had been applied under the home mortgage protection (HMP) insurance policy, the answer to whether there had been any changes in health after the certificate was applied for would have been YES. The policy would therefore not have been issued without significantly more inquiry on CUNA Mutual's part. However, for home mortgage protection insurance, these more stringent individual life insurance underwriting processes were not used. They were not used because the insurance company priced for and expected a significantly higher level of claims (47% higher) under HMP policies due to their less stringent underwriting requirements. The Tommy Bob Hall case was one which clearly passed through this intentionally less stringent filter.

However CUNA Mutual appears to want the benefit of the more stringent underwriting requirements, even though it priced reflective of significantly less stringent underwriting processes. Further as can be seen from the charts A and B, the expected death claims under HMP policies are over 210% of those expected under individual life policies in the first two years the policies are in force. This is the policy period in which Mr. Hall died.

What CUNA Mutual is in effect saying with respect to the Hall claim is that they priced for and expected significantly more death claims, especially in the policies' early durations, and now they want to avoid their contractual responsibilities. They want to find reasons not to pay the rightful death claims under HMP policies that might have been discovered as part of a more stringent underwriting process analogous to individually underwritten life insurance.

2. In this same vein, the application form for home mortgage protection insurance asks fewer medical questions and also uses an accept or decline rating methodology. This rating process issues all policies in a single pricing classification. It covers all insureds when such insureds were classified as a standard risk or had an expected extra mortality rating which at most was not greater than 175% of a standard mortality classification. Note however that non-smokers and smokers were charged different rates.
3. The HMP insurance was not solicited by Tommy Bob Hall. It was just a fact of doing business for Mr. Hall. When he took out a mortgage, he just accepted the related mortgage insurance coverage that went along with it. CUNA Mutual has implied that Mr. Hall lied on his application. Why would someone take \$20,000 out of their savings which lowered the amount of HMP insurance on the new mortgage as compared to the previous mortgage? If someone had a medical condition that they wanted to hide, then they clearly would have retained their previous, higher amount mortgage and the correspondingly higher mortgage protection insurance that went along with it.
4. The Hall claim was not listed as "resisted" in the December 31, 2001 Annual Statement, Schedule F. On page 54 of the 2001 Annual Statement of CUNA Mutual Insurance Society, where all currently resisted claims are shown, the Hall claim was not shown. This leads to the question of what other resisted claims were not shown, and whether there is a pattern of consistent omissions of other resisted claims. For the 1999 Annual Statement, finalized as of February 28, 2000, the Hall claim was correctly not shown as "Resisted" as it was then a rescinded policy.
5. **Determination of Punitive Damages, if Determined As Applicable By a Jury:**
 - A. Which life insurance company or companies should any punitive damage award be applied against? CUNA Mutual Group is a marketing name. The life companies which are defacto managed by the same executives are CUNA Mutual Insurance Society (CMIS) which issued the certificate of insurance to Mr. Hall and CUNA Mutual Life Insurance Company (CMLIC). On page 8 of Mr. Paul Lawin's deposition, he states that the companies are managed as if they are a single company. Further on page 11, he states that the company is marketing itself as a total entity. Finally, it is very difficult when reviewing the CUNA Mutual Annual Reports to come away with any other conclusion but that it is a single entity, with different operating divisions. As such, any non-direct damage award should be based on the income or surplus (net worth) of the combined entity.

Further supporting a single combined entity approach are that both insurance companies (CMIS and CMLIC) are managed to achieve the same ratings from all the rating services except Weiss' Ratings service: A.M. Best gives both companies an A rating, Standard and Poor's gives both companies an Api rating, Fitch gives both companies a AA rating. Weiss gives CMIS a C+ rating while it gives CMLIC a B+ rating. Further the insurance service Vital Signs which measures insurance companies on a 100 point scale gives both companies a 78 Comdex rating.

B. Financial Measures (based on 2001 Annual Statements) that could be used to measure the amount of the punitive damages award:

(All numbers in thousands of dollars)

| Financial Measure | CMIS | CMLIC | Total | PD % | PD Amount |
|---|-------------|--------------|--------------|-------------|------------------|
| Admitted Assets | 2,390,524 | 5,386,351 | 7,776,875 | 1/10 of 1% | 7,777 |
| Total Surplus & AVR | 597,818 | 275,112 | 872,930 | 1% | 8,729 |
| Net Income from Operations | 13,202 | 7,244 | 20,446 | 20% | 4,089 |
| Total Net Income Includes Realized Capital Gains: | 13,413 | 8,914 | 22,327 | 20% | 4,465 |

Note: PD % is the Punitive Damage percentage which if assessed against the total CMIS and CMLIC amounts would yield the Punitive Damage Amount (PD Amount) found in the last column.

- C. Comparative Damages:** The combined insurance companies could be assessed a measure of damages in relationship to what Tommy Bob Hall was paying in premiums. Hall was paying \$32 per month with after tax dollars. Given that he was making \$40,000 per year at the time, that annualized expenditure was equivalent to \$533 and represented 1.33% of his gross wages: $(384/(1-.28 \text{ tax bracket}))$. That percentage of earnings was what Hall was willing to pay annually for this coverage. Based on the HMP smoker mortality rates applicable to Hall's certificate, Hall's life expectancy was far greater than his remaining future working lifetime of 20.5 years. (He was 44.5 at the time of his death.)

The penalty to CUNA Mutual company should be for not less than that same relative magnitude of his earnings, applied to their earnings for his future remaining working lifetime.

D. **Comparable CUNA Mutual “wages”:**

CUNA Mutual’s wages, as seen from the above chart, were \$22.3 million in 2001. As such applying the 1.33% for 20.5 years yields a comparable damage amount of \$5.9 million.

- E. **Risk Based Capital Measure:** The state insurance commissioners and their umbrella organization, the National Association of Insurance Commissioners, have promulgated various standards for the amount of surplus which insurance companies should have based on the particulars of their various assets and liabilities. In order to not have any operating or reporting restrictions placed on them by the state insurance commissioners, a life insurance company must have Risk Based Capital ratios of 250% or higher.

The combined companies of CMIS and CMLIC have a risk based capital ratio of 296% as of December 31, 2001: 403% for CMLIC and 247% for CMIS. Their combined surplus and AVR (asset valuation reserve) which is usually considered a part of surplus was \$872,930,000 as of 12/31/01. This means that the combined companies’ “free surplus,” or surplus not implicitly required to support their policyholder obligations as of that date was \$135,658,000. A percentage of this amount could then be considered as available for a penalty for their disregard of Mrs. Nancy Hall’s legitimate claim and still not inhibit their other policyholders’ required surplus amounts. 5% of this amount would be 6.8 million dollars.

- F. **Damages Based on Earnings of the CMIS Unit Responsible for the Home Mortgage Protection (HMP) and Member Elect Credit Life (MECL) Lines of Business:** Based on Rick Fischer’s deposition, it is clear that these two lines of business are managed by a single management team. As such should any damages be assessed based on this business unit’s results, and not the overall operating entity’s results as a whole, then the damages should be based on total results for both these lines of business. As seen from Chart C, attached, which shows the annual profits for these lines of business for the last four years, the annual and average profits are as follows:

Annual Profits (CMIS’ Credit Union Lines of Business)
(All numbers in thousands of dollars)

| | 1998 | 1999 | 2000 | 2001 | Av Last 4 Yrs | Av Last 2 Yrs |
|-------|-------|------|-------|--------|---------------|---------------|
| HMP | 192 | 633 | 132 | 527 | 371 | 329 |
| MECL | 1,215 | 177 | 8,522 | 17,238 | 6,788 | 12,880 |
| Total | 1,406 | 810 | 8,654 | 17,765 | 7,159 | 13,209 |

The average annual profits for this business unit for the last two years was \$13.2 million. Therefore should 10% of this unit's profits be assessed as damages for the next five years, and profits are assumed to remain at the average level of the last two years, then such damages would be \$6.6 million.

6. **Why punitive damages should be assessed:**

- CMIS' letter denying claim but CMIS had in their records at the time the claim was denied the 1993 pathology report which clearly stated the mole was not cancerous nor was it a melanoma.
- CMIS' intimidating actions: First by the SIU unit's referral to the Pennsylvania Attorney General without any internal investigation on their own, and second, by not telling Mrs. Nancy Hall that the Attorney General was not going ahead with the any action against her.
- Brenda Larson being in a position to make a decision without proper training or management: She held the fate of Mrs. Nancy Hall and did not have adequate supervision or training on which to base her decision.
- The many reports from doctors involved were clear that the 1993 mole was not cancerous nor a melanoma: Yet in spite of these reports, CUNA continued to refuse payment of the Hall claim.

Summary:

That CUNA Mutual's continuous denial constitutes unreasonable conduct for a prudent insurance company.

Dr. Charlesworth's name was on the application completed by Tommy Bob Hall. CMIS did not pursue obtaining Tommy Bob Hall's medical records from Dr. Charlesworth at that time. Had they obtained those records, they would have seen their concerns that they subsequently raised when the claim was filed. CMIS had the chance to underwrite the insurance certificate application at that time. They did not.

Further, CMIS priced for an extra level of associated death claims reflective of the less stringent underwriting standard for the HMP line of business. It appears that CMIS and the CUNA Mutual Group now want to have it both ways. This is clearly unreasonable conduct.

Richard A. Schwartz
June 21, 2002

Chart A.

Hall v. CUNA Mutual Group et al: Expected Death Claims Calculations

Mortality Comparison Charts

50K - 100K Individual Face Amounts - Age 42:

| 50K - 100K Individual Face Amounts - Age 42: | | | | | | | | | | HMP Mortality Rates - Age 42 | | | | Ratio: HMP/ Individual Coverage |
|--|----------------------|-------|----------------------|--------|------------------------|--------|-------------------|-------------------|-----------------|------------------------------|--|--|--|--|
| Duration | Indiv Ins | | Indiv Ins | | Combined | | Smoker 1000 Qx | Non-Sm 1000 Qx | Comb 1000 Qx | M+F/NS-S .8 NS/.2 SM | | | | |
| | Comb NS S 1000 Qx | Male | Comb NS S 1000 Qx | Female | M/F 1000 Qx 75 / 25 | | | | | | | | | |
| | | | | | | | | | | | | | | |
| 1 | | 0.83 | | 0.39 | | 0.720 | 2.33 | 1.35 | 1.546 | 214.7% | | | | |
| 2 | | 1.12 | | 0.64 | | 1.000 | 3.12 | 1.81 | 2.072 | 207.2% | | | | |
| 3 | | 2.28 | | 1.22 | | 2.015 | 4.12 | 2.39 | 2.736 | 135.8% | | | | |
| 4 | | 2.18 | | 1.37 | | 1.978 | 4.81 | 2.79 | 3.194 | 161.5% | | | | |
| 5 | | 2.41 | | 1.61 | | 2.210 | 5.30 | 3.07 | 3.516 | 159.1% | | | | |
| 6 | | 2.73 | | 1.91 | | 2.525 | 5.73 | 3.32 | 3.802 | 150.6% | | | | |
| 7 | | 2.93 | | 2.02 | | 2.703 | 6.12 | 3.55 | 4.064 | 150.4% | | | | |
| 8 | | 3.33 | | 2.18 | | 3.043 | 6.49 | 3.76 | 4.306 | 141.5% | | | | |
| 9 | | 3.58 | | 2.37 | | 3.278 | 6.88 | 3.99 | 4.568 | 139.4% | | | | |
| 10 | | 4.02 | | 2.43 | | 3.623 | 7.43 | 4.31 | 4.934 | 136.2% | | | | |
| 11 | | 4.76 | | 2.75 | | 4.258 | 8.11 | 4.70 | 5.382 | 126.4% | | | | |
| 12 | | 5.67 | | 3.16 | | 5.043 | 9.25 | 5.36 | 6.138 | 121.7% | | | | |
| 13 | | 6.81 | | 3.68 | | 6.028 | 10.64 | 6.17 | 7.064 | 117.2% | | | | |
| 14 | | 8.12 | | 4.30 | | 7.165 | 12.20 | 7.07 | 8.096 | 113.0% | | | | |
| 15 | | 9.71 | | 4.95 | | 8.520 | 13.54 | 7.85 | 8.988 | 105.5% | | | | |
| 16 | | 11.15 | | 5.56 | | 9.753 | 15.28 | 8.86 | 10.144 | 104.0% | | | | |
| 17 | | 12.27 | | 6.13 | | 10.735 | 16.84 | 9.76 | 11.176 | 104.1% | | | | |
| 18 | | 13.31 | | 6.74 | | 11.668 | 18.54 | 10.75 | 12.308 | 105.5% | | | | |
| 19 | | 14.57 | | 7.40 | | 12.778 | 20.46 | 11.86 | 13.580 | 106.3% | | | | |
| 20 | | 15.81 | | 8.02 | | 13.863 | 22.58 | 13.09 | 14.988 | 108.1% | | | | |

Chart B.**Comparison of Expected Death Claims Assuming 10% Annual Mortgage Turnover Rate
And HMP Level of Death Claims**

| Duration | Mortgages Inforce BOY | Mortgages Terminated Voluntarily | Mortgages Terminated By Death | Mid Year Face Am't | Annual Expected Death Payments | Discounted Expected Annual Death Payments | Sum: Years 1&2 |
|----------|-----------------------------|--|-------------------------------------|-----------------------|---|--|------------------------------------|
| 1 | 1,000.00 | 100.00 | 1.469 | 55,660 | 81,748 | 81,748 | 168,665 |
| 2 | 898.53 | 89.85 | 1.769 | 55,040 | 97,348 | 86,917 | |
| 3 | 806.91 | 80.69 | 2.097 | 54,380 | 114,052 | 90,922 | |
| 4 | 724.12 | 72.41 | 2.197 | 53,670 | 117,924 | 83,936 | |
| 5 | 649.51 | 64.95 | 2.169 | 52,910 | 114,788 | 72,950 | |
| 6 | 582.39 | 58.24 | 2.104 | 52,090 | 109,573 | 62,175 | |
| 7 | 522.05 | 52.20 | 2.016 | 51,230 | 103,255 | 52,312 | |
| 8 | 467.83 | 46.78 | 1.914 | 50,300 | 96,261 | 43,544 | |
| 9 | 419.13 | 41.91 | 1.819 | 49,300 | 89,670 | 36,216 | |
| 10 | 375.40 | 37.54 | 1.760 | 48,240 | 84,884 | 30,610 | |
| 11 | 336.10 | 33.61 | 1.718 | 47,100 | 80,939 | 26,060 | Ratio Top/Bottom = 210.7% |
| 12 | 300.77 | 30.08 | 1.754 | 45,880 | 80,466 | 23,132 | |
| 13 | 268.94 | 26.89 | 1.805 | 44,580 | 80,458 | 20,652 | |
| 14 | 240.24 | 24.02 | 1.848 | 43,190 | 79,804 | 18,289 | |
| 15 | 214.37 | 21.44 | 1.830 | 41,700 | 76,328 | 15,618 | |
| 16 | 191.10 | 19.11 | 1.842 | 40,110 | 73,867 | 13,495 | |
| 17 | 170.15 | 17.02 | 1.807 | 38,400 | 69,370 | 11,316 | |
| 18 | 151.33 | 15.13 | 1.769 | 36,580 | 64,726 | 9,427 | |
| 19 | 134.43 | 13.44 | 1.734 | 34,630 | 60,057 | 7,810 | |
| 20 | 119.25 | 11.92 | 1.698 | 32,550 | 55,268 | 6,417 | |

Assumptions:

| | | | | |
|----------------------|-------|---------------|-----------|---------|
| Annual Term Rate | 10.0% | Cum Exp | | |
| Annual Discount Rate | 12.0% | Death Claims: | 1,730,787 | 793,546 |

**Comparison of Expected Death Claims Assuming 10% Annual Mortgage Turnover Rate
And Individual Life Level of Death Claims**

| Duration | Mortgages Inforce BOY | Mortgages Terminated Voluntarily | Mortgages Terminated By Death | Mid Year Face Am't | Annual Expected Death Payments | Discounted Expected Annual Death Payments | Sum: Years 1&2 |
|----------|-----------------------------|--|-------------------------------------|-----------------------|---|--|-------------------|
| 1 | 1,000.00 | 100.00 | 0.684 | 55,660 | 38,071 | 38,071 | 80,056 |
| 2 | 899.32 | 89.93 | 0.854 | 55,040 | 47,023 | 41,985 | |
| 3 | 808.53 | 80.85 | 1.548 | 54,380 | 84,165 | 67,096 | |
| 4 | 726.13 | 72.61 | 1.364 | 53,670 | 73,213 | 52,111 | |
| 5 | 652.15 | 65.22 | 1.369 | 52,910 | 72,444 | 46,039 | |
| 6 | 585.57 | 58.56 | 1.405 | 52,090 | 73,167 | 41,517 | |
| 7 | 525.61 | 52.56 | 1.349 | 51,230 | 69,131 | 35,024 | |
| 8 | 471.70 | 47.17 | 1.363 | 50,300 | 68,578 | 31,021 | |
| 9 | 423.16 | 42.32 | 1.318 | 49,300 | 64,956 | 26,235 | |
| 10 | 379.53 | 37.95 | 1.306 | 48,240 | 63,006 | 22,721 | |
| 11 | 340.27 | 34.03 | 1.376 | 47,100 | 64,822 | 20,871 | |
| 12 | 304.87 | 30.49 | 1.460 | 45,880 | 67,004 | 19,262 | |
| 13 | 272.92 | 27.29 | 1.563 | 44,580 | 69,668 | 17,882 | |
| 14 | 244.07 | 24.41 | 1.661 | 43,190 | 71,751 | 16,444 | |
| 15 | 218.00 | 21.80 | 1.764 | 41,700 | 73,578 | 15,056 | |
| 16 | 194.43 | 19.44 | 1.801 | 40,110 | 72,254 | 13,201 | |
| 17 | 173.19 | 17.32 | 1.766 | 38,400 | 67,823 | 11,063 | |
| 18 | 154.10 | 15.41 | 1.708 | 36,580 | 62,482 | 9,100 | |
| 19 | 136.98 | 13.70 | 1.663 | 34,630 | 57,583 | 7,488 | |
| 20 | 121.62 | 12.16 | 1.602 | 32,550 | 52,136 | 6,053 | |

Assumptions:

| | | | | |
|----------------------|-------|---------------|-----------|---------|
| Annual Term Rate | 10.0% | Cum Exp | | |
| Annual Discount Rate | 12.0% | Death Claims: | 1,312,859 | 538,241 |

Ratio Exp
Claims 131.8% 147.4%
HMP/Indiv

Chart C:**HMP and MECL Profit Calculations**

| <u>HMP Life</u> | 1998 | 1999 | 2000 | 2001 | Total 4 Yrs | Average 4 Years | Average Last 2 Years |
|------------------------|------------------|----------------|------------------|-------------------|-------------------|--------------------|-------------------------|
| Dir Earned Premiums | 2,722,278 | 2,968,666 | 3,154,485 | 3,215,319 | 12,060,748 | 3,015,187 | 3,184,902 |
| Claims Paid | 977,857 | 790,773 | 909,352 | 1,031,744 | 3,709,726 | 927,432 | 970,548 |
| Incurred Claims | 955,059 | 793,328 | 963,108 | 1,052,165 | 3,763,660 | 940,915 | 1,007,637 |
| Claim Rsv (w/o LAE) | 37,194 | 39,749 | 93,505 | 113,926 | 284,374 | 71,094 | 103,716 |
| Increase in Policy Rsv | 436,406 | 361,892 | 529,919 | 439,197 | 1,767,414 | 441,854 | 484,558 |
| Policy Reserve | 3,192,949 | 3,554,841 | 4,084,760 | 4,523,957 | 15,356,507 | 3,839,127 | 4,304,359 |
| Credit Union Reimb | 393,966 | 429,707 | 447,895 | 436,080 | 1,707,648 | 426,912 | 441,988 |
| Experience Refund | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Operating Expense | 744,986 | 751,172 | 1,081,944 | 760,930 | 3,339,032 | 834,758 | 921,437 |
| Annual Profits | 191,861 | 632,567 | 131,619 | 526,947 | 1,482,994 | 370,749 | 329,283 |
| <u>MECL Life</u> | 1998 | 1999 | 2000 | 2001 | Total 4 Yrs | Average 4 Years | Average Last 2 Years |
| Dir Earned Premiums | 143,446,684 | 153,050,386 | 167,736,697 | 173,565,992 | 637,799,759 | 159,449,940 | 170,651,345 |
| Claims Paid | 88,688,061 | 96,322,371 | 96,667,001 | 100,442,252 | 382,119,685 | 95,529,921 | 98,554,627 |
| Incurred Claims | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Claim Rsv (w/o LAE) | 13,254,000 | 12,114,000 | 16,281,000 | 14,514,000 | 56,163,000 | 14,040,750 | 15,397,500 |
| Increase in Policy Rsv | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Policy Reserve | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Credit Union Reimb | 22,960,789 | 25,127,336 | 29,203,901 | 30,257,305 | 107,549,331 | 26,887,333 | 29,730,603 |
| Experience Refund | 4,526,128 | 5,726,378 | 6,917,827 | 10,904,152 | 28,074,485 | 7,018,621 | 8,910,990 |
| Operating Expense | 25,235,116 | 26,837,094 | 22,258,915 | 16,491,091 | 90,822,216 | 22,705,554 | 19,375,003 |
| Annual Profits | 1,214,591 | 177,207 | 8,522,053 | 17,238,192 | 27,152,043 | 6,788,011 | 12,880,123 |
| HMP+MECL | | | | | | | |
| Total Annual Profits: | 1,406,452 | 809,774 | 8,653,672 | 17,765,139 | 28,635,037 | 7,158,759 | 13,209,406 |

LIFE INSURANCE ANALYSTS, INC.

RICHARD A. SCHWARTZ A Professional Biography

Dick Schwartz is President of *Life Insurance Analysts, Inc.* In this capacity he functions as a consultant to professional advisors and their clients, national insurance carriers and insurance marketing organizations. Life Insurance Analysts (LIA) provides due care, product analyses, marketing and reinsurance consultation to these communities. Schwartz also assists financial institutions in implementing new insurance distribution strategies by structuring products, insurance carriers and independent distribution resources. In addition Schwartz has completed significant amount of expert witness work for both plaintiffs and the defense.

In October 2000, LIA completed structuring an arrangement among three prominent insurance carriers, which allowed the eighth largest national CPA firm to commence its financial services practice in conjunction with over 100 independent agents. Schwartz now assists in implementation of that venture along with expansion of its services to address different client needs.

Prior to founding Life Insurance Analysts in 1994, Schwartz served for eight years as Executive Vice President of M Life Insurance Company, an affiliate of the M Financial Group. Prior to that he was Senior Vice President of Product Marketing for SunAmerica Insurance where his functional responsibilities also included strategic planning and product development.

Mr. Schwartz brings to the firm 33 years of experience in the insurance industry. After receiving his Bachelor of Science degree from Clarkson University, Mr. Schwartz went on to receive his Master's in Actuarial Science from Northeastern University. Mr. Schwartz is a Fellow in the Society of Actuaries, a Member of the American Academy of Actuaries, a Chartered Life Underwriter and a member of the Association for Advanced Life Underwriting (AALU.)

A frequent speaker on due care as it applies to life insurance companies and products, Mr. Schwartz has spoken before the American College of Trust and Estate Counsel (ACTEC), Miami Estate Planning Institute, Notre Dame Tax and Estate Planning Institute, and the Association for Advanced Life Underwriting (AALU). He has written several articles on these topics for several publications including *Probate & Property*, *Trusts & Estates*, and *Best's Review*.

Listing of Publications:

- * 1989 - Co-author of the first ABA primer "**Life Insurance Products, Illustrations, and Due Diligence**" for the Real Property, Probate and Trust Law Section.
- * April 1991 - Due Diligence: A Means To Build Client Confidence. Broker World
- * May 1991- Due Diligence: Assessing the Survivorship Purchase. Trusts and Estates.
- * Feb 1993 - **The Scoop on Variable Life:** Probate and Property ABA magazine.
- * March 1994 Co-author of **American Bar Association primer "Life Insurance Due Care: Carriers, Products, and Illustrations."**
- * March 1995 **Keeping Faith with Policyholders: Guidelines for Companies and Producers.** CLU Journal

Extended Professional Resume

June 21, 2002

Qualifications:

- **Extensive experience in life insurance producer groups**
- **Proficiency in life company profitability management** as evidenced by building M Life reinsurance company into a very profitable operation with 1994 net profits exceeding twenty million dollars. This is in contrast to the scratch operation M Life was in 1986 with annual profits of less than one million dollars.
- **Expert in product development and pricing**, for M Financial Group and SunAmerica.
- **Advanced Product Knowledge:** The keys in designing life products are simplicity and creating meaningful edges that can be valued by the customer and advisor. Concept sales, not spread sheet sales, should be the focus. My unique experiences working with insurance carriers, producers, and also in high net worth direct sales, enables me to synthesize these elements into marketable products.
- **Extensive business planning experience**, at The Madison Group, M Financial, M Life and SunAmerica.
- **Excellent communication skills**, both written and verbal as seen from my extensive national speaking presentations, books and articles.
- **Ability to effectively interact with insurance professionals, advisors and senior insurance company management.** This is reflected by LIA's very effective consulting practice established over the last eight years.
- **In-depth understanding of the marketing process** in the high net worth estate planning and COLI areas.
- **Significant expert witness work.**

Life Insurance Analysts, Inc. (1994 - Current)

- **Consulting Clients:** LIA provides diversified consulting services to life insurance carriers, marketing firms, and law and CPA advisors. In addition LIA provides expert witness support work for both plaintiffs and defendants.
- **Consulting Experience With Producer Groups:** From 1994 - 2002 LIA's clients have included: Connecticut Mutual Life, General American, Lincoln National, Minnesota Life, Partners Group, Programmed Insurance Marketing and Prudential Select Life.

M Financial Group: (1986 - 1994.)

- Executive Vice President - M Life Ins Company: 1991 - 1994
- Senior VP - Product Development and Sales: 1986 - 1992
- Senior VP - Chief Actuary, M Life Ins Company: 1986 - 1991

The M Group is the largest agent-owned marketing and life reinsurance company in the United States. M Financial is structured in five value-added segments: sales (producer relationships), marketing presentation systems, unique product development, carrier relationships, and M Life reinsurance. My responsibilities included the last three.

SunAmerica (Sun Life Insurance Company of America)

(1973 - 1986)

- Senior Vice President, Product Marketing (1984 - 1986)
- Senior Vice President, Product and Planning (1981 - 1984)
- Vice President, Product Development (1976 - 1980)
- Actuary (1973 - 1976)
- Member of the Board of Directors of both Sun Life Insurance Company of America and its subsidiary, Universal Guaranty Life Insurance Company.

Product Marketing Responsibility: 1984 - 1986

In 1984 I developed a matrix product line organization where the profitability of each distribution arm was a joint responsibility between the sales department and the Product Line function which I managed. My area's responsibility was to develop products, marketing materials and the necessary micro computer systems. Equally important, this group monitored the product lines and took corrective action to maintain ongoing profitability for the existing business. This responsibility encompassed all distribution systems. This group included management of a staff of 35, including 5 direct reports.

Product Development and Strategic Planning Responsibility: 1981 -1984

I was responsible for Sun Life's business and strategic planning. Business planning encompassed the annual marketing and financial plans, including budgets. Strategic planning consisted of a five-year plan detailing which distribution systems and markets should be emphasized. During this time I also managed a twenty person product development staff including actuaries, sales promotion and sales training specialists.

Massachusetts Indemnity and Life Insurance Company: (1967 - 1973)

Starting in 1967 as an actuarial trainee, I progressed to Associate Actuary in four years. I managed the actuarial department with responsibilities in both the valuation and product development areas. In this context I developed new life and disability product portfolios and was responsible for the Company's initial conversion to GAAP accounting.

ACADEMIC:

- Clarkson University, Potsdam NY: BS in Math, 1967. Fifth out of 370 graduates.
- Northeastern University, Boston: Masters in Actuarial Science, 1969
- Fellow in the Society of Actuaries, 1973.
- Member of the American Academy of Actuaries, 1975
- Chartered Life Underwriter, 1990

MILITARY:

- 8/67 - 6/69 US Army - Signal Corps Officer
- Vietnamese language specialist
- Forward operations Signal Platoon leader - Independent infantry brigade

Richard A. Schwartz
June 21, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing document was served by U.S. first-class mail, postage prepaid, upon the following:

Stephen R. Pedersen, Esquire
214 Senate Avenue, Suite 602
Camp Hill, PA 17011

Catherine Mahady-Smith, Esquire
3115-A N. Front Street
Harrisburg, PA 17110

Charles T. Young, Jr.

Attorney for Defendants

Dated: August ___, 2002

28

02/23/2002

| A MESSAGE | | |
|---|--|-------------------|
| For <u>Brenda</u> | Date <u>1-31</u> | Time <u>12:50</u> |
| Caller <u>Barb</u> | | |
| Of <u>Dr. Hurley office</u> | | |
| Phone <u>888-296-6933</u> | | |
| <input type="checkbox"/> URGENT <input type="checkbox"/> Please Call <input type="checkbox"/> Returned Your Call <input type="checkbox"/> Will Call Again <input type="checkbox"/> Wants To See You <input type="checkbox"/> Came To See You | Message <u>You requested</u> <u>medical info. on</u> <u>Tommy Hall, RE32534.</u> <u>His file cannot be</u> <u>found. They have mis-</u> <u>placed or lost his</u> <u>records.</u> Message Taken By <u>Julie</u> | |
| - Attorney involved | | |



2/1/00 Barb → 4 pages to Attorney in Harrisburg 4/99
 ever since, they cannot locate file.

1998 U.S. Dist. LEXIS 4046 printed in FULL format.

CYNTHIA LOCKHART v. FEDERAL INSURANCE CO. and CHUBB & SON,
INC.

CIVIL ACTION No. 96-5330

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

1998 U.S. Dist. LEXIS 4046

March 30, 1998, Filed; March 31, 1998, Entered

DISPOSITION: [*1] Defendants' Motion for Partial Summary Judgment (Doc. #7)
GRANTED in part. Plaintiff's claims against defendant Chubb & Son DISMISSED.
Motion otherwise DENIED.

CASE SUMMARY

PROCEDURAL POSTURE: Defendants, insurer and affiliated company sought summary judgment in an action filed by plaintiff insured that alleged that her insurance claim was wrongfully denied and that the defendants had acted in bad faith.

OVERVIEW: The insured made a claim relating to a flood that occurred in her basement while she was on vacation. The insurer's investigation lasted approximately 20 months, at which time the insurer denied the claim. The denial letter was on the affiliated company's letterhead, signed by the insurer's adjuster and a subsequent refund of premium was made via a check with the affiliated company's name on it. However, the affiliated company was not named in the insurance contract. The court held that one could not reasonably find from the evidence that the affiliated company was a party to the insurance contract and granted the company's motion. The court denied the insurer's motion, finding that a reasonable jury could have found by clear and convincing evidence that the insurer acted in bad faith in handling or denying the insured's claim because of the delays and refusal to determine the claim without extensive and unnecessary documentation.

OUTCOME: The court granted the affiliated company's motion for summary judgment and denied the insurer's motion for summary judgment.

CORE TERMS: basement, adjustor, water, coverage, insurer, insurance contract, personal property, insurance policy, insured, premium, summary judgment, decision to deny, water damage, breaching, discovery, salvage, breach of contract, reasonable basis, recklessly, obtained information, sworn statement, refund check, inventorying, affiliated, reflecting, undertaken, processing, letterhead, effective, demanded

1998 U.S. Dist. LEXIS 4046, *1

CORE CONCEPTS -

Contracts Law: Breach: Causes of Action

One cannot be liable for a breach of contract unless one is a party to that contract. One cannot breach a contract that one is not a party to.

Insurance Law: Bad Faith & Extracontractual Liability: Failure to Settle

A defendant who is not legally obligated to pay a claim and who does not make the decision to deny a claim cannot be liable for knowingly or recklessly denying a claim under a policy without a reasonable basis.

Insurance Law: Bad Faith & Extracontractual Liability: Failure to Settle

A determination of bad faith does not require proof that the insurer was motivated by a dishonest or improper purpose. Recklessness or acts undertaken by the insurer with a reckless indifference to the interests of the insured can support a finding of bad faith.

COUNSEL: For CYNTHIA LOCKHART, PLAINTIFF: ANGEL LUIS FRANQUI, PHILA, PA USA.

For FEDERAL INSURANCE COMPANY, CHUBB & SONS, INC., DEFENDANTS: ERIC D. FREED, COZEN & O'CONNOR, PHILA, PA USA.

JUDGES: JAY C. WALDMAN, J.

OPINIONBY: JAY C. WALDMAN

OPINION: MEMORANDUM and ORDER

This is a breach of insurance contract and bad faith action. Plaintiff alleges that defendants Federal Insurance Company ("Federal") and Chubb & Son Inc. ("Chubb") issued a renters insurance policy to her and later failed to pay a claim covered by that policy. She also alleges that the lengthy investigation and unreasonable denial of her claim constitute bad faith conduct. See 42 Pa. C.S.A. @ 8371.

Presently before the court is defendants' Motion for Partial Summary Judgment in which Chubb seeks summary judgment on plaintiff's claims against it and Federal seeks summary judgment on plaintiff's bad faith claim. The pertinent facts as uncontested or otherwise viewed most favorably to plaintiff are as follow.

Plaintiff purchased a Chubb Masterpiece Deluxe Renters[*2] insurance policy through the David M. Frees Insurance Agency in July 1994. The policy covered the house plaintiff rented at 807 Byers Road in Chester Springs, Pennsylvania and was effective from July 25, 1994 until July 25, 1995. It provided plaintiff with \$ 120,000 coverage for personal property loss.

The "Agreement" section states "We agree to provide the insurance described in this policy in return for your premium and compliance with the policy provisions." The policy defines "We" as "the insurance company named in the Coverage Summary." The Coverage Summary names defendant Federal as the company issuing the policy. The policy defines "You" as "the person named in the Coverage Summary, and a spouse who lives with that person." Plaintiff is named as the insured. Defendant Chubb is not mentioned in the text of the Coverage Summary, although its name does appear in a copyright notation at the bottom

of the page. Mr. Frees avers that the policy was "purchased from Federal."

On August 3, 1994 plaintiff returned home from a two-week vacation and discovered that the basement was flooded by water approximately ten inches deep. Plaintiff used the basement primarily to store personal property, [*3] including furniture, housewares, clothing and books. Most of the property was saturated by the water.

Plaintiff immediately informed her landlord's property manager of the flooded basement. The property manager's plumber inspected the basement the next day and was unable to pinpoint the source of the water. He did find that the two basement sump pumps were not working because they had been unplugged, and he immediately began draining the thousands of gallons of water from the basement.

On August 8, 1994 plaintiff reported the water damage to the Frees Agency which relayed the claim to Federal. It then engaged an independent insurance adjustor who visited plaintiff's property on August 15, 1994. The adjustor spoke with plaintiff, examined the damaged property and began a preliminary investigation.

Within three days the adjustor determined and reported that the source of the water remained unclear, plaintiff was engaged in eviction proceedings with her landlord and had done little to protect her wet property from further damage after the water was drained. The adjustor recommended that Federal retain an attorney to investigate plaintiff's claim and take her sworn statement. Federal [*4]did so.

It retained an attorney, Eric Freed. He wrote to the plaintiff on September 30, 1994 to advise her that on behalf of Federal he was pursuing an investigation of her claim, and requiring her to produce numerous records and documents. Mr. Freed apprised plaintiff that Federal could not assess its liability for her claim until it examined these records and documents. These included all of plaintiff's credit card statements and other records reflecting any debts, writings reflecting insurance claims "of any kind" made by her "at any time," her tax returns for the prior three years, evidence of all income received by her over the prior three and a half years, and all bank account statements for the past three and a half years.

In late August or early September the adjustor arranged for a property salvage company to assist plaintiff in inventorying her loss and protecting her property from further damage. Despite differences between plaintiff and salvage company employees over the manner in which the work was to proceed, most of the inventorying and clean-up was finished by mid-October 1994.

In December 1994, the adjustor estimated the total property loss in plaintiff's basement[*5] at \$ 200,000. In August 1995, plaintiff completed her sworn statement in proof of loss. She demanded the \$ 120,000 policy limit based on her estimate of damages of \$ 325,000.

The investigation of plaintiff's claim lasted from August 1994 to April 1996. Federal attributes much of the delay to plaintiff's inability or failure timely to provide the company with the requested records and documents and her failure to appear prepared for scheduled depositions. As noted, however, the records and documents demanded by Federal were substantial in scope and time-frame. Federal ultimately deposed plaintiff, obtained information from several witnesses

about the circumstances surrounding the discovery of water in plaintiff's basement, the condition of plaintiff's personal property before the flood and plaintiff's financial situation in the Summer of 1994.

Two witnesses said they saw boxes with mildew when plaintiff moved from her prior residence to the Byers Road house. These witnesses had an obvious antipathy for plaintiff. Plaintiff acknowledged that some items stored in the basement of the prior residence had sustained water damage but averred that these were not among the items for which[*6] she presented a claim to Federal. The basement at the Byers Road house was full of personal property which physically could not have fit into the basement of plaintiff's prior residence. Federal also obtained information that plaintiff's income had fallen around the time of the flood which it viewed as a possible motive to commit insurance fraud.

On April 5, 1996, Federal informed plaintiff through her attorney that her claim was denied. The reasons given by Federal were that a majority of the property damage occurred before the coverage period, that plaintiff intentionally concealed or misrepresented material facts regarding the extent and cause of her loss, that plaintiff failed promptly to notify Federal of the cause and extent of damage, and that she interfered with the salvage company's attempts to mitigate her damages which constituted neglect sufficient to void the policy.

The reasons were set forth in a letter written and signed by a Federal claims adjustor for "Federal Insurance Company." The letterhead read "Chubb Group of Insurance Companies." Federal is one of eight companies identified on several exhibits as members of the "Chubb Group." Chubb provides loss adjustment[*7] services for Federal and other affiliated companies.

In June 1996 Federal canceled plaintiff's renewed insurance policy effective June 18, 1996 based on her alleged misrepresentations. Shortly thereafter plaintiff received a premium refund check for \$ 110.00. Defendant Chubb's name appears over the signature. The top of the check has the Chubb Group logo and the names of eight companies including Federal.

Defendant Chubb contends that it was not a party to the insurance contract and thus cannot be liable for a breaching it or for bad faith conduct under @ 8371.

Clearly "one cannot be liable for a breach of contract unless one is a party to that contract." *Electron Energy Corp. v. Short*, 408 Pa. Super. 563, 597 A.2d 175, 177 (Pa. Super. Ct. 1991) (citing *Viso v. Werner*, 471 Pa. 42, 369 A.2d 1185 (Pa. 1977)), *aff'd*, 533 Pa. 66, 618 A.2d 395 (Pa. 1993). It is fundamental that "one cannot breach a contract that one is not a party to." 597 A.2d at 178.

From the evidence of record one cannot reasonably conclude that defendant Chubb was a party to the insurance policy purchased for plaintiff by the Frees Insurance Agency. The plain language of the policy categorically identifies Federal[*8] as the party which agreed to provide plaintiff with coverage. Mr. Frees avers that the policy was purchased from Federal. Federal readily admits that it issued the subject policy and denied plaintiff's claim under it. Defendant Chubb is mentioned nowhere in the substantive terms of the contract.

That Federal and other affiliated companies use stationery with a common

1998 U.S. Dist. LEXIS 4046, *8

Chubb Group letterhead or forms copyrighted by defendant Chubb does not make that defendant a party to plaintiff's insurance contract. That defendant provides loss adjustment services for Federal and other affiliates also does not make them a party to each underlying insurance contract.

Defendants offer no explanation regarding the \$ 110 refund check. It is unclear whether the Chubb Group companies have certain common accounts or pool premiums or for some oblique accounting purpose pay refunds for all from a designated account. Perhaps these was a Federal account and a Chubb check was used because a processing or administrative error. The point is that one is left to speculate. Plaintiff apparently never inquired during discovery about the reason or otherwise about the precise relationship of the defendants, and certainly[*9] presented no evidence regarding these matters.

Plaintiff makes no allegation or showing of alter ego status. To conclude that defendants generally commingling funds, let alone disregarded corporate formalities and independence of function, from one payment of a nominal refund for one from an account of the other would be pure conjecture. Plaintiff could have elicited details about the handling of premiums, payments and claims processing by defendants and the extent to which one may dominate or control the actions of the other. Plaintiff either failed to do so or elected not to present any such evidence which was obtained in discovery. n1

- - - - -Footnotes- - - - -

n1 There is no showing or suggestion that defendant Chubb or Chubb Group operated with regard to Federal in a fraudulent manner which deprived plaintiff of a legal remedy. Federal has assets of \$ 9.1 billion and a \$ 2.5 billion surplus.

- - - - -End Footnotes- - - - -

Evidence may exist to show that defendant Chubb was the de facto insurer of plaintiff and that it was actually responsible for the decision[*10] to deny her claim. No such evidence, however, has been presented by plaintiff or otherwise appears of record.

Plaintiff contends that Chubb was an "agent" of Federal. It may have been for some purposes but for none which appear of record that would make Chubb the insurer under plaintiff's policy. While Federal may be liable for conduct undertaken on its behalf by Chubb as its agent, this would not make Chubb liable for breaching a contract to which it was not a party or for bad faith toward someone who was not its insured.

In short, one cannot reasonably find from the evidence of record that Chubb was a party to the insurance contract at issue, conducted the investigation of plaintiff's claim or made the decision to deny coverage to her. In the absence of such evidence, plaintiff cannot sustain a claim against Chubb for breaching an insurance contract or for bad faith conduct "toward the insured" by "the insurer." See 42 Pa. C. S. A. @ 8371. A defendant who is not legally obligated to pay a claim and who does not make the decision to deny a claim cannot be liable for knowingly or recklessly denying a claim under a policy without a reasonable basis. See *Klinger v. State Farm* [*11] *Mut. Auto Ins. Co.*, 115

1998 U.S. Dist. LEXIS 4046, *11

F.3d 230, 233 (3d Cir. 1997). Defendant Chubb is entitled to summary judgment on the record presented in this case.

A determination of bad faith does not require proof that the insurer was motivated by a dishonest or improper purpose. See Klinger, 115 F.3d at 233-34. Recklessness or acts undertaken by the insurer with a reckless indifference to the interests of the insured can support a finding of bad faith. Id. At 235; Polselli v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 751 (3d Cir. 1994).

Federal admits that material issues of fact preclude summary judgment on plaintiff's breach of contract claim. Viewing and construing the record in a light most favorable to plaintiff, one cannot say that no reasonable juror could find by clear and convincing evidence that Federal handled or denied plaintiff's claim in bad faith. n2 A jury could find that Federal had a reasonable basis to suspect fraud and that this justified its demand for extensive personal financial information from plaintiff. A jury, however, also could find that Federal acted unreasonably or recklessly in raising the specter of fraud and, in any event, in refusing to determine plaintiff's[*12] claim without demanding extensive personal information which exceeded that necessary to identify any prior water damage claim or to assess her economic situation in July 1994. n3

- - - - -Footnotes- - - - -

n2 The failure of a plaintiff's claim for coverage does not preclude relief under @ 8371 for the bad faith handling of the claim. See March v. Paradise Mut. Ins. Co, 435 Pa. Super. 597, 646 A.2d 1254, 1256 (Pa. Super. Ct. 1994), app. denied, 540 Pa. 613, 656 A.2d 118 (Pa. 1995).

n3 Tax returns and bank books, for example, can reflect private information about charitable gifts, health treatment and personal affiliations. Also, for example, the pertinence of a five or ten year old automobile accident or health insurance claim is difficult to discern.

- - - - -End Footnotes- - - - -

ACCORDINGLY, this 30th day of March, 1998, upon consideration of defendants' Motion for Partial Summary Judgment (Doc. # 7) and plaintiff's response thereto, IT IS HEREBY ORDERED that said Motion is GRANTED in part in that plaintiff's claims against defendant Chubb & Son are[*13] DISMISSED and this Motion is otherwise DENIED.

BY THE COURT:

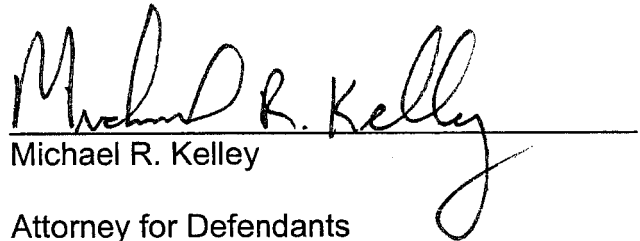
JAY C. WALDMAN, J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing document was served by U.S. first-class mail, postage prepaid, upon the following:

Stephen R. Pedersen, Esquire
214 Senate Avenue, Suite 602
Camp Hill, PA 17011

Catherine Mahady-Smith, Esquire
3115-A N. Front Street
Harrisburg, PA 17110


Michael R. Kelley
Attorney for Defendants

Dated: August 30, 2002

Moving Defendants was not one of employment or agency, but simply a business arrangement between enterprises that shared a common goal of maximizing the sale of Amish made furniture and home furnishings.

The Bravman court (as well as courts deciding similar cases before and after Bravman) have imposed a "reasonable term" in certain contracts, in recognition of the unequal bargaining positions of large employers and individual employees and agents. Bravman, 552 F.2d at 93-94; see also Lubrecht v. Laurel Stripping Co., 127 A.2d 687 (Pa. 1956) (engineer found entitled to reasonable term of employment by mining corporation for whom he gave up municipal position and personal business ventures); Lucacher v. Kerson, et al., 45 A.2d 245 (Pa. Super. 1946) (employee who underwent substantial hardship in relocating family in order to take new position found entitled to long term employment). There is some compelling justification for preventing an employer from inducing an employee or agent to restrict his activities to one particular line of work or the sales of a particular manufacturer and then terminating the relationship before the employee or agent may realize a fair return on what he has sacrificed. Marder v. Conwed Corp., 75 F.R.D. 48 (E. D. Pa. 1977) (contract between manufacturer and sales representatives who enabled manufacturer to obtain government contract held not terminable at will before representatives could receive any commissions). In the

dispute over when Moving Defendants were entitled to be paid for merchandise delivered to QVC. Kauffman Transcript at 212-16.

absence of such compelling justification, courts generally do not impose a duration or any other contractual terms as to which the parties have not mutually agreed. Greene v. Oliver Realty, Inc., 526 A.2d 1192, 1194 (Pa. Super 1987). Plaintiffs cite no case in which a court has applied the "reasonable term" principle recognized in Bravman outside of the employment or agency context.⁴ Moving Defendants have been unable to locate any precedent for extending application of the Bravman principle to business relationships generally. Nor should this Court permit Plaintiffs to get to a jury by metamorphosing a sales contract between two independent businesses into a contract of employment.

This court should permit Plaintiffs to proceed to trial only on contract terms as to which the record provides competent evidence that the parties have mutually agreed. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). As detailed in Moving Defendants' Motion and initial Brief, the record demonstrates mutual commitment of the parties to no more than the ongoing sale of Amish-manufactured goods for an indefinite period of time. Styles, quantities and prices changed as the parties agreed from time to time. Suggesting that there were no disputes as to these items does not evidence mutual consent to the unending commitment that Plaintiffs now seek to impose on Moving Defendants.

⁴ Plaintiffs cite Loos and Dilworth v. Quaker State Oil Refining Corp., 500 A.2d 1155 (Pa. Super. 1985), as an example of application of the Bravman principle in the context of a franchise agreement. While the Loos and Dilworth court similarly sought to protect an individual service station franchisee from arbitrary termination by a national franchisor, the court made no reference to the Bravman line of cases or to imposition of a "reasonable" contract term.

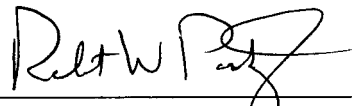
III. Conclusion

Moving Defendants are entitled to summary judgment on Count IV of the Amended Complaint.

Respectfully submitted,

LAPP & PONTZ, LLP
Attorneys for Moving Defendants

Dated: 8/29/02

By: 
Robert W. Pontz, Esquire
Pa. Attorney I.D. #56554
255 Butler Avenue, Suite 101
Lancaster, PA 17601
(717) 396-1200

CERTIFICATE OF SERVICE

The undersigned certifies that on this *29th* day of *August, 2002*, he caused true and correct copies of the foregoing Reply Brief in Support of Motion of Defendants Elam Kauffman, Mary Kauffman, K&M Woodworking, Inc., K&M Woodworking LLC, John U. Stoltzfus and True Wood Furniture LLC ("Moving Defendants") for Summary Judgment to be served by first class mail, postage prepaid, upon counsel of record at the following addresses:

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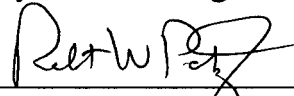
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